PROCEEDINGS

OF THE

NATIONAL CONGRESS

ON

UNIFORM DIVORCE LAWS.

PROCEEDINGS

OF THE

NATIONAL CONGRESS

ON

UNIFORM DIVORCE LAWS,

HELD AT

WASHINGTON, D. C., FEBRUARY 19, 1906.

HARRISBURG, PA.:
HARRISBURG PUBLISHING CO., STATE PRINTER,
1906.

PROCEEDINGS

OF THE

NATIONAL CONGRESS

ON

UNIFORM DIVORCE LAWS.

Washington, D. C., February 19, 1906.

The delegates to the National Congress on Uniform Divorce Laws, appointed by the governors of the several states of the Union in response to the invitation from the Governor of Pennsylvania, pursuant to the Act of the General Assembly, approved the 16th day of March, A. D., 1905, assembled at the New Willard Hotel, at 10 o'clock A. M.

WILLIAM H. STAAKE, Chairman of the Provisional Committee of Arrangements, Pennsylvania: The Congress which has assembled under the invitation extended by Governor Pennypacker, of Pennsylvania, will now please come to order. The Divine Blessing upon our proceedings will be invoked by the Reverend Doctor Edward Everett Hale.

PRAYER BY DR. EDWARD EVERETT HALE.

Father of perfect love, Thou alone art in the midst of us—strength for our weakness, light for our darkness, wisdom for our folly, love for our love. Father, Thou art with us to-day in Thine own Holy Spirit; and may this inspiration go with this assembly in whatever it does, and whatever men say. If we only know how to draw nearer

to Thee, and yet nearer, that is all. Thou hast taught us in the gospel of Thy Son, that the pure in heart shall see Thee; and we beg and pray, that, as we come here to work, this purity may be in every household in this land; that men may come up to Thee morning, noon and night for strength and light, and love. And, Father, we know that Thou wilt give them more than they ask for. Be with the households of this land. If the households are pure, the States will be pure; if the States are pure the nation will be pure, and thus shall we be that happy people whose God is the Lord. Show this nation how to seek first the kingdom of God, and Thy righteousness; that shall be enough for us; and we know that all things will be added. Father, we ask this in Christ Jesus.

Our Father, who art in Heaven, hallowed by Thy name. Thy kingdom come. Thy will be done on earth as it is in Heaven. Give us this day our daily bread. And forgive us our trespasses as we forgive those who trespass against us. And lead us not into temptation, but deliver us from evil, for Thine is the kingdom and the power and the glory forever and ever. Amen.

The CHAIRMAN: I will now call the official roll of delegates, and would ask the delegates present to respond, so that a note may be made of their attendance at this opening session.

If there are any delegates whose names have not been handed in, the Committee of Arrangements will be very glad to receive them, and have them handed to the Committee on Credentials, which will be appointed.

The following delegates responded to roll call, noting here also, for convenience, the chairman and secretary of the several state delegations:

Alabama:

Hon. Henry D. Clayton, Chairman.
Hon. A. A. Wiley,
Hon. Oscar W. Underwood.

Arkansas:

Hon. James P. Clarke,
Hon. Charles Floyd,
Hon. C. C. Reid.

California:

Hon. A. R. Dabney, Chairman.
Hon. J. N. Gillett,
Hon. Charles L. Chandler.

Colorado:

Hon. Robert W. Bonynge, Chairman.

Connecticut:
Hon. Talcott H. Russell, Chairman.
Hon. Walter E. Coe,
Hon. Erliss P. Arvine.

Delaware:
Hon. Benjamin Nields, Chairman.
Hon. Robert H. Richards,
Hon. Henry Ridgeley,
Hon. Preston Lea, Governor.

District of Columbia:
Hon. Aldis B. Browne, Chairman.
Hon. Walter C. Clephane,
Hon. F. L. Siddons.

Florida:
Hon. Robert W. Williams, Chairman.

Georgia:
Hon. Richard A. Denny, Chairman.
Hon. Henry R. Goetchius,
Hon. George W. Williams, Secretary.

Idaho:
Hon. J. F. Ailshie, Chairman.
Mrs. Martin Wagner.

Illinois:
Hon. John C. Richberg, Chairman.
Hon. John P. McGoorty,
Hon. Thomas Taylor,
Hon. John J. Brenholt.

Indiana:
Hon. Hugh Th. Miller, Chairman.
Hon. S. C. Stimpson,
Hon. H. C. Sheridan,
Hon. Thad M. Talcott.

Iowa:
Hon. Benjamin P. Birdsall, Chairman.

Kentucky:
Hon. John D. Carroll, Chairman.
Hon. J. Wheeler Campbell,
Hon. R. W. Miller.

Louisiana:
Hon. J. R. Thornton, Chairman.
Hon. W. O. Hart.

Maine:
Hon. Charles F. Libby, Chairman.
Hon. Hannibal E. Hamlin, Secretary.
Hon. F. M. Higgins.

Maryland:
Hon. Stevenson Archer Williams, Chairman.
Hon. Milton G. Urner.
Hon. George R. Gaither.

Massachusetts:
Hon. George E. Gardner, Chairman.
Rev. Dr. Samuel W. Dike.

Michigan:
Judge Alfred Wolcott, Chairman.
Rev. Caroline Bartlett Crane,
Hon. Adam E. Bloom.

Minnesota:
Rev. A. J. D. Haupt, Chairman.
Justice Edwin A. Jaggard.

Missouri:
Hon. Seneca N. Taylor,
Hon. T. J. Murray, Secretary.

Nebraska:
Hon. J. L. Webster, Chairman.
Hon. Roscoe Pound, Secretary.
Hon. Ralph W. Breckenridge.

New Hampshire:
Hon. Joseph W. Fellows, Chairman.
Hon. Ira A. Chase, Secretary.
Hon. Henry E. Burnham.

New Jersey:
Judge William M. Lanning, Chairman.
Rev. Dr. Henry Collin, Secretary.
Vice-Chancellor John R. Emery.

New Mexico:
Hon. Francis Tracy Tobin.

New York:
Hon. Walter S. Logan, Chairman.
Hon. Charles Thaddeus Terry, Secretary.
Dean E. W. Huffcut.

North Carolina:
Hon. J. C. Buxton, Chairman.
Hon. Fabius H. Busbee, Secretary.
Hon. A. B. Andrews,
Hon. B. B. Winburne.

North Dakota:
Bishop John Shanley, Chairman.
Hon. M. H. Brennan, Secretary.
Hon. J. G. Hamilton,
Hon. John Hurley,
Hon. C. A. Lounsberry.

Ohio:
Judge Thomas M. Bigger, Chairman.
Hon. Frank H. Kerr.

Oregon:
Hon. Otto J. Kraemer, Chairman.

Pennsylvania:
Hon. C. La Rue Munson, Chairman.
Hon. William H. Staake, Secretary.
Hon. Walter George Smith,
Hon. Samuel W. Pennypacker, Governor.

Rhode Island:
Judge John H. Stiness, Chairman.
Hon. Amasa M. Eaton, Secretary.

South Dakota:
President H. K. Warren, Chairman.
Dean Thomas Sterling,
Hon. G. W. Case.

Tennessee:
Bishop Thomas F. Gailor,
Rev. W. E. Thompson,
Hon. Seid Waddell,
Rev. Ira Landrith,
Rev. J. W. Bachman.

Texas:
Hon. W. L. Alexander, Chairman.

Utah:
Senator George Sutherland, Chairman.
Mrs. Rachel Siegel, Secretary.
Senator Reed Smoot,
Mrs. George Sutherland,

Hon. Joseph Howell,
Mrs. Minnie Loveland Snow.

Vermont:
Hon. Joseph P. Lamson, Chairman.

Virginia:
Hon. R. T. Barton, Chairman.
Hon. John Garland Pollard, Secretary.
Hon. Arthur A. Phlegar.

Washington:
Dr. Fanny Leake Cummings, Chairman.

West Virginia:
Rev. Dr. John Wier, Chairman.
Hon. E. D. Leach, Secretary.
Hon. B. F. Meighen.

Wisconsin:
Hon. Edward W. Frost, Chairman.

Wyoming:
Judge J. A. Van Orsdel, Chairman.

JOHN GARLAND POLLARD, Virginia: Mr. Chairman: I have been authorized to put in nomination the following gentlemen as officers of this convention:

President: Gov. Samuel W. Pennypacker, of Pennsylvania.

Vice Presidents: Amasa M. Eaton, Rhode Island; C. LaRue Munson, Pennsylvania; R. T. Barton, Virginia; A. R. Dabney, California.

Secretary, William H. Staake, Pennsylvania.

AMASA M. EATON, Rhode Island: It gives me great pleasure to second the nomination of all but myself. Certainly, the Governor of the great state that has inaugurated this movement, and who has given so much time and attention to this subject, and produced the very excellent and perfect results that will be presented to us as soon as our organization is effected, should most appropriately occupy the chair. It gives me great pleasure to second the nomination.

JOHN GARLAND POLLARD, Virginia: I move that the Secretary be instructed to cast the ballot of this Congress for the officers.

Duly seconded and agreed to.

The CHAIRMAN: You have heard the motion which has been seconded, that the Secretary of the meeting cast one ballot for the

officers nominated as President, Vice Presidents and Secretary of this Congress. Are you ready for the question?

The question being as stated by the Chair, it was agreed to, and the officers nominated were declared unanimously elected by the Congress.

Governor Pennypacker of Pennsylvania then took the chair.

The PRESIDENT: I have the pleasure of introducing Hon. Henry B. F. MacFarland, of the District of Columbia, who will make an address of welcome.

ADDRESS OF WELCOME BY HON. HENRY B. F. MacFARLAND.

Mr. President, Ladies and Gentlemen: I appreciate very much the agreeable honor which falls to me as President of the Board of Commissioners of the Executive Government of the District of Columbia of offering you the welcome of the national capital this morning. The national capital has already welcomed you with its finest kind of winter weather. We have been preparing for this for a long time in your honor. Even the ground hog who came out on his day, and saw his shadow, was not able to bring about the proverbial result of storms for forty days. We trust that your stay here may be most agreeable to you.

You, of course, have the freedom of the national capital, as all the citizens of the United States have, as it is your capital, not ours alone; and we think you will find it even more beautiful than it has been on former visits, because every year adds to its attractiveness. Every prospect pleases, and only man is vile; and man in this case does not embrace woman. We have, of course, human nature here, and with it all the things that human nature does, although we have only one cause for divorce under our present law. There is no doubt that the desire for divorce on more frivolous grounds is found here, as well as elsewhere. Not long ago, on one of the street cars, a friend of mine heard a colored woman talking; she said: "I hear you-all has left your husband." "Yes." "Why? Did he beat you-all?" and she says, "No." "Was he mean to you-all?" "No," she says. "And why you-all leave him?" and she says, "Oh, just 'cause I got naturally tired of him." I fear that such frivolous reasons are still in the minds of some people here as well as elsewhere.

Be that as it may, we are very glad indeed to respond to Governor Pennypacker's request for the appointment of delegates to this Con-

gress, because we realize the vital importance of securing uniform legislation respecting divorce. Since the home is the cornerstone of the state, such legislation affects the most precious interests of the entire community. The lack of uniformity has produced most unfortunate conditions and gross evils, which challenge the attention of all thinking men and women.

The national capital, with its interest in every state and territory, and with the eyes of the whole people upon it, is the place for the deliberations of such a congress, composed of such eminent men and women, including some men who, for more than a quarter of a century in connection with the American Bar Association and the Commissions on Uniformity ot Legislation, as well as in other organizations, have blazed the way for success. We may well hope that what is done here may bring that success to complete achievement.

Already something has been accomplished in the adoption in part by some of the states of a model divorce procedure recommended by the Conference on Uniform Legislation. But the great work remains to be done; and meanwhile the constant presentation of the question to the public opinion of the country has in itself made a great impression and brought about improvements in state laws, even though they do not yet yield uniformity. We of the national capital shall be delighted if an agreement is reached here, which, registered by Congress and the legislatures in uniform statutes, shall remove a reproach from the national honor.

The PRESIDENT: I am quite sure that I but express the sentiment of all of us that in no other place could we have properly assembled; and that we could have found no one else who would have given us a more pleasing and more cheerful greeting than Mr. MacFarland.

PRESIDENT'S ADDRESS

By Hon. Samuel W. Pennypacker, Governor of Pennsylvania.

"Whosoever shall put away his wife and marry another committeth adultery against her." Mark, Ch. X, verse XI.

Ladies and Gentlemen: At the last regular session of the General Assembly of the Commonwealth of Pennsylvania, an act introduced by the Honorable William C. Sproul, a senator from the county of

Delaware, in that state, was passed authorizing the Governor to communicate with the governors of the several states requesting them to co-operate in the assembling of a congress of delegates "for the purpose of examining, considering and discussing the laws and decisions of the several states upon the subject of divorce, with a view to the adoption of a draft for the proposed general law which shall be reported to the governors of all the states for submission to the legislatures thereof, with the object of securing as nearly as may be possible uniform statutes upon the matter of divorce throughout the nation." In obedience to this direction the Governor of Pennsylvania invited the governors of the other states of the Union to participate by the appointment of delegates, and it is an indication of the widespread interest taken in this subject that forty-two of the states, as well as the District of Columbia, are represented in this convention now so auspiciously opened.

Of the three states which are unrepresented, one of them, South Carolina, does not permit divorcement for any cause and, therefore, it may be said with reasonable accuracy that only two of the forty-five states have failed to indicate an appreciation of the significance of the movement upon which you have embarked. It is believed that never before for any purpose, governmental or otherwise, has an official representation of so many states been gathered together in convention. When you compare yourselves with the conventions which brought about the adoption of the Constitution and the creation of the government of the United States, and recall that at Annapolis in 1786 only five of thirteen states were represented, and that at Philadelphia in 1787, two weeks after the opening of the convention, only four of the thirteen had appeared, you may well congratulate yourselves upon the promising start which has been made. A Frenchman has truly written: "*C'est le premier pas qui coute.*" It is impossible to overestimate the importance of the topic you have come together to discuss, and to do somewhat to formulate, for the reason that it involves questions which concern individual happiness, and likewise lie at the foundation of our State and national institutions. All of the virtues have their inspiration around the hearthstone. The sentiment which leads man to buffet with the world for the protection and preservation of the household when extended to wider spheres becomes the patriotism which urges him to sacrifice his comfort and even life, if need be, to defend an endangered country. From that early time long ages ago when the Shunamite woman, invited to enjoy the luxuries of the court of Solomon, proudly answered those who had come from the King to tempt her, "I dwell among mine own people," down to the recent period in which J. Howard Payne wrote his heart stirring song and Thomas Hovenden painted his famous picture of the country boy

leaving mother and fireside to enter the world, the home has typified whatever is dearest and most valuable to man upon earth. We sympathize with the soldier of the legion from Bingen who lay dying in far away Algiers, not so much because in the fortunes of war he had been fatally wounded, as because

"There was lack of woman's nursing,
There was dearth of woman's tears."

The home is the starting point of all municipal, as well as national life. The clans were made up in their origin of kinsmen. The authority of the ruler of a country was but an extension of that of the head of a household. When the Prince of Orange liberated his people from the control of Spain he became to them "Father William," and when Washington succeeded in resisting the power of Great Britain, the fond title was given him of "The Father of his Country." The classes who had the controlling influence in Rome were the patricians—the Patres. When the modern Englishman or American, seeking to know something of his origin and the surroundings amid which his race history was written, goes back to the Rhine country whence came the forefathers of both of them, he finds almost every city and village designated as a "heim." It is a fact full of significance and indicates that away back in the darkness of the past, these dawning municipalities were regarded as the homes of the organized people, as the house was the home of the family. The home which is so essential a factor in the development of our national life is the outcome of the relation of man to woman; it is the place where the woman has her existence as a wife, and where the children are born, nurtured, and reared. Tacitus, in describing the Germans about the time of the beginning of the Christian era, says: "the matrimonial bond is nevertheless strict and severe with them. * * * Almost singly among barbarians they content themselves with one wife." This proper appreciation of the dignity of womanhood and true conception of her place in the human economy doubtless expresses what had even then been a custom through unknown generations and had become an instinct of the race. It is interwoven into our literature and into all our processes of thought. It has become embodied in our standards of ethics and our laws. It has endured through all the centuries which have elapsed since Tacitus made his observations. It has survived through the ignorance and coarseness of the dark ages, through the brutalities and temptations which accompanied destructive wars; through changes of policies and government and emigrations across seas to distant lands and climes; and now in this advanced age, in our own country is threatened with destruction. In this American republic we are in danger of undermining and uprooting, little by little, what has given shelter and health to so many genera-

tions of Saxons and Normans, Germans and English. The eastern peoples had a different idea of womanhood and they put it into practice. The civilizations they established have crumbled into the dust. Their example creeping slowly into Europe polluted the Romans, and the power of Rome, broken by the indulgence of the people in vices of which laxity in the marital relations was one of the manifestations, disappeared from the earth. The dissolution of the marriage tie, which at no very remote period rendered the reign of a Tudor notorious and in more recent days darkened the fame of a Napoleon, has now among us become so common as to be regarded as an ordinary event, awakening no comment and meeting with little or no disapproval. Divorce, by means of the law, which at one time could only be secured by the interposition of the whole sovereignty through an act of Parliament or of the legislature was, as the efforts in this direction became more frequent, given into the jurisdiction of the courts. The courts in turn embarrased by the multiplicity of causes, have in many instances delegated divorce proceedings to the determination of masters, who give hearings and reach conclusions in the privacy of their offices. The way to the breach of this most sacred of human relations is thus rendered easy, inexpensive and comparatively certain of success.

And lurking in the shadow is the lawyer making a specialty of divorce proceedings, ready to tender his service to those whose fancies have wandered away from their lawful mates, aided by detectives who are compensated for furnishing the necessary testimony, with all the possibilities of perjury and fraud which these surroundings suggest. Within the last month there was sent from Chicago to the Secretary of the Commonwealth of Pennsylvania what purported to be a decree in divorce made by the Superior Court of our own State. It was signed by "I. C. Collis, Judge," and bore a flaming red seal. Very appropriately it was made a part of the decree "that the plaintiff, Alice ——— is at liberty to marry again." The Superior Court of Pennsylvania has no jurisdiction to grant divorces and no judge named Collis ever sat upon its bench. The deceived libellant had received the fraudulant decree from her counsel, and had relied upon its validity in good faith. When an applicant for divorce encounters difficulties in the state of which he is a resident, he changes his domicile to some other state where the laws are more complacent and benigant. There are more divorces granted annually in the United States of America than in any other country upon earth, except Japan, whose people we have been in the habit of regarding as heathen.

A recent writer in the Messenger, the Rev. B. J. Otten, who has investigated the subject, declares that at the time of the census of 1900 there were 198,914 divorced persons living in the United

States; that there were nearly seventy thousand divorces granted in 1903, and that the proportion of divorces to marriages is increasing with alarming rapidity. When we reflect that this road leads to Tophet, that the grist which is ground by the mills of the gods is exceedingly fine and that the laws of nature are inexorable, we may well regard such degeneracy in morals and such loss of that fibre which gives character to a nation with the gravest apprehension. Therefore, this convention of delegates from the many states has been assembled. It is not to be expected that any radical action will be taken, or that the pronounced views of those who think, that under no circumstances should divorces be permitted, can at this time be adopted. If you shall give utterance to a conservative sentiment upon the subject which has long been waiting and hoping for an opportunity for expression, you will have accomplished much of value. If you can do somewhat to limit and check a stream which promises ere long to be a flood you may well be content. What is recommended in the way of legislation ought to be the outcome of careful deliberation and wise consideration in order that it may commend itself to the prudent and thoughtful in all of the states, and avoid, so far as may be consistent with the object sought to be accomplished, criticism and opposition.

All good people who have at heart the continued welfare of the country, including many in foreign lands whose attention has been attracted by this unprecedented movement for the betterment of conditions, await with keen interest the result of your discussions. May your labors be blessed with abundant fruition.

J. L. WEBSTER, Nebraska: Mr. Chairman, it seems desirable, to carry on speedily and effectively the work of this Congress, that we should have certain committees. I, therefore, move you that there be appointed a Committee on Credentials, composed of seven members; a Committee on Procedure, to be composed of five members; and a Committee on Resolutions, to be composed of seventeen members, and that the Chair appoint said Committees.

ROBERT W. WILLIAMS, Florida: I second that motion.

The question being upon the motion of Mr. Webster, it was unanimously agreed to.

JOHN C. RICHBERG, Illinois: I am from Chicago, the so-called home of easy divorces, but I think before this convention adjourns it will be made manifest that Illinois only presents the sentiment of the average divorce code in the Union, and three-fourths to four-fifth of the states of the Union present just as easy causes of divorce as the State of Illinois; but at this time, Mr. President, inasmuch as in all probability the roll call of this convention voting on

motions will be by states—I see some are represented by one, two, three, six, eight, ten and fifteen delegates—I move you that each state, and the District of Columbia represented here, be requested to hand to the Secretary the name of the chairman and secretary of the various delegations, so that when the vote will be announced upon any particular question by states, the chairman or secretary of such state shall announce it.

The PRESIDENT: I am quite sure that this action will be taken later, but at present it is out of order, for the motion for appointment of committees has already been carried. The Chair has appointed the committees, and the Secretary will now read the appointments.

WILLIAM H. STAAKE, Pennsylvania, Secretary: The following are appointed by the President as members of the several committees:

On Credentials.

Hon. W. O. Hart, Louisiana, Chairman.
Hon. James P. Clarke, Arkansas,
Hon. M. H. Brennan, North Dakota,
Hon. Walter E. Coe, Connecticut,
Hon. John P. McGoorty, Illinois,
Hon. John L. Webster, Nebraska,
Mrs. Ella Knowles Haskell, Montana.

On Procedure.

Hon. Benjamin Nields, Delaware, Chairman.
Judge Alfred Wolcott, Michigan,
Hon. Robert W. Williams, Florida,
Prof. George E. Gardner, Massachusetts,
Judge Thomas M. Bigger, Ohio,
Mrs. Rachel Siegel, Utah.

On Resolutions.

Hon. Walter George Smith, Pennsylvania, Chairman.
Hon. F. L. Siddons, District of Columbia.
Hon. George W. Williams, Georgia,
Judge J. F. Ailshie, Idaho,
Hon. Thad M. Talcott, Indiana,
Hon. Milton G. Urner, Maryland,
Judge Edwin A. Jaggard, Minnesota,
Bishop John Shanley, North Dakota,
Vice-Chancellor John R. Emery, New Jersey,
Dean E. W. Huffcut, New York,

Hon. Ralph W. Breckenridge, Nebraska,
Bishop Thomas F. Gailor, Tennessee,
Hon. John Garland Pollard, Virginia,
Hon. Otto J. Kraemer, Oregon,
Hon. J. N. Gillett, California,
Hon. G. W. Case, South Dakota,
Hon. Charles F. Libby, Maine.

WALTER GEORGE SMITH, Pennsylvania: I have the honor to submit the following rules of order for the government of this convention:

Rules of Order.

1. The sessions of the convention shall begin at ten o'clock on each morning, and shall continue until one o'clock P. M., when an adjournment shall be had to 2.30 P. M. The afternoon sessions shall continue until 5.30 P. M., and no evening session shall be held excepting by special order of the Congress.

2. The usual parliamentary rules shall govern all debates.

3. No delegate shall be entitled to speak longer than ten minutes on any subject, nor more often than once on the same subject, except by unanimous consent.

4. Votes on all resolutions relating to the subject of divorce shall be taken by states, the Secretary calling the roll of the states in alphabetical order, and the chairman of each state delegation voting for his delegation, and no resolution on the subject of divorce shall be taken as expressing the sense of the Congress unless it shall receive the votes of the majority of the states represented in the Congress, including the District of Columbia as a state.

5. Any delegate arising to address the Chair shall announce his name and the state he represents.

6. All resolutions shall be read by the Secretary, unless in print and previously distributed, and referred without debate to the Committee on Resolutions.

7. The Vice Presidents, in the absence of the President, shall preside at the sessions on alternate days in regular order.

And I accept the amendment of Mr. Richberg that each state's delegation shall appoint a chairman and hand the name of the chairman to the Secretary.

I also offer the following Order of Business:

Reports of Committees:

a. Committee on Credentials.
b. Committee on Procedure.
c. Committee on Resolutions.

And that at 2.15 P. M. to-day all business be suspended so that this Congress may attend in a body the reception given by the President of the United States to this Congress.

ROSCOE POUND, Nebraska: I move that these Rules of Order be presented to the Committee on Procedure for consideration and report.

WALTER GEORGE SMITH, Pennsylvania: The Pennsylvania delegation have felt that they ought to do all that they could to assist this Congress in coming at once to the discussion of the substantive proposition that has brought it together. It is absolutely necessary, of course, that there shall be rules of procedure; but as gentlemen and ladies are here, many of them from a great distance, we want to avoid, as far as we can, delays in matters that do not affect the substance of subjects that we have brought them here to discuss. Therefore, the preliminary Committee of Arrangements, appointed at Narragansett Pier at the meeting of the American Bar Association and the Commissioners on Uniform Legislation, made up of delegates to this Congress, as far as they had been appointed, have met and have given hours to the consideration of this whole subject; and they have frankly made these arrangements, which are now announced and presented for your consideration. It is, of course, apparently an anomaly that a Committee on Procedure should be appointed, and the Congress should take into its own hands, before that Committee reports, the rules of procedure. But it is eminently proper, Mr. President, I submit, that there should be a Committee on Procedure, because it may be desirable to amend these rules subsequently; some improvement may be necessary; and there should be a committee on that subject; but why, now, when it is absolutely essential that we should have some rules to govern us, refer to a committee necessitating a delay? It is for that reason that I cannot accept the suggestion of the delegate that this matter be referred to a committee.

AMASA M. EATON, Rhode Island: I second the proposition to pass the Rules of Order and Order of Business in the present form. They have been carefully considered, and they are especially intended to expedite the transaction of our business.

The question being upon the motion to adopt the Rules of Order and Order of Business just proposed, it was agreed to.

C. LA RUE MUNSON, Pennsylvania: As Chairman of the Pennsylvania delegation, I am instructed to present to this Congress certain resolutions upon the subject of divorce, together with a suggested Divorce Code. These are offered by the delegation from Pennsylvania as a start in our work, and as some assistance to the

Congress in its work, and only by the way of suggestion. These resolutions as suggested, and this code as suggested, are printed and will be handed to the delegates. I move, sir, that they be referred to the Committee on Resolutions.

Following is a copy of the suggested resolutions:

I. As to Federal Legislation.

1. It is the sense of the Congress that no federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment,—a necessary prerequisite,—would be futile.

Note.—Under our form of government the subject of divorce is peculiarly within the jurisdiction of each of the states. The federal government has no jurisdiction under the Constitution and should have none, in matters of such purely domestic concern as the status of marriage. To give such jurisdiction it would be necessary to change in this respect the relations of the states to the national government in a manner that would involve a constitutional revolution. Only the most extreme advocates of a centralized government could be brought to support such an amendment. Whatever may be the individual views of delegates to this Congress on constitutional questions, it is most desirable that it should devote itself to the consideration of remedies for the divorce evil that are practicable. The division of opinion on the subject of the strengthening of the powers of the national government by weakening those of the states is so pronounced that we should be met at the outset by debate that would carry us far from the purpose for which we are assembled.

In the second place, assuming that a change in the federal constitution is desirable to permit national legislation on the subject of divorce, the necessity of securing the approval of two-thirds of both branches of Congress to the submission of the proposed amendment to the states, or the application of the legislatures of two-thirds of the states for a constitutional amendment, and the subsequent ratification by the legislatures of three-fourths of the states to such a constitutional amendment makes it practically impossible; therefore, in order to eliminate this question entirely from the deliberation of the Congress, it has been thought wise to submit this, as the first general resolution.

II. As to State Legislation.

1. Each state should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens, just provision being made, however, that when the status of a wife is restored as a citizen of her original state by her returning to that state after an injury sufficient to warrant a divorce therein, she should be entitled to sue in that state, provided she was a resident thereof at the time of her marriage. This privilege should be guarded by requiring a reasonably long period of residence in her original state after such return.

Note.—It will be observed that this resolution covers three points: (a) That the legislation of a state should afford protection only to its own citizens; (b) That a wife should not lose her citizenship by reason of her marriage, so far as the protection of the divorce statutes is concerned; (c) That her right to such protection should be restricted by requiring a given perlod of residence in her original domicile before bringing suit for divorce.

a. It is obvious that a very large proportion of the evils under existing legislation of the different states arises from the fact that the general proposition that the laws of divorce are properly made only for the protection of those persons whose domicile is in the state where relief is sought at the time cause of the divorce arose has been overlooked; and if each state would deny its courts jurisdiction in divorce to any applicant excepting one who was a citizen at such time, the anomalies now existing would be removed. Since the matrimonial relation is considered as being properly a matter of the highest moment to the state, and the preliminary contract must be executed in accordance

with the laws of each state in order to be legal, it is obvious that any proceedings for dissolution of the status of marriage must find their sanction in the legislation of that state. And it has been settled by a long line of decisions that any attempt of one state to extend its jurisdiction over the status of marriage between citizens of another state is void, beyond the confines of the state in which proceedings are taken. All of the evils arising from migratory divorces will be met and removed by a strict adherence to this rule; and the extraordinary anomaly and injustice so often presented of persons who have been freed from the bonds of matrimony in one state being still held as married in other states will no longer exist.

(b) As is well known, the citizenship of a wife, depending upon her domicile, follows that of her husband. But when an injury has been done her sufficient to warrant a divorce, it has been long recognized that she might acquire a separate domicile, including of course, a domicile in the state in which she had her residence at the time of her marriage. By the adoption of legislation such as is recommended in this resolution, the wife will acquire such separate domicile as she may determine, either in the state where she is living with her husband, or by returning to the state in which she resided at the time of her marriage. It is intended to restrict this separate domicile, however, either to a different domicile in the state in which she has lived with her husband, or in the state in which she had her home at the time of her marriage. There should be no right for the wife to acquire a domicile other than that of her husband in any other state, excepting that of which she was a citizen at the time of her marriage. The reason for this is that either the courts of the domicile of both husband and wife should have jurisdiction, because the injury arose while they had a common domicile in that state, or the jurisdiction should be given in favor of an injured wife in the state of her original domicile, because in that state she would, in most cases, find her only relations and natural protectors when the ill treatment of her husband compelled her to withdraw herself from his home. There can be no reason why the courts of a state which, at the time of the marriage, and during the continuance of the marriage, and at the time the injury complained of arose, were foreign both to husband and wife, should acquire jurisdiction by the will of either of the parties.

c. The reason why some period of residence should be required before the wife can sue for divorce in her former domicile is to be found in the fact that a distinction is necessarily made between those citizens whose continued residence gives them the protection of the laws of the state, and those who come into the state where they originally lived, but have lost their original domicile. A *bona fide* residence on the part of all applicants for divorce for a certain period of time is properly required in all cases. Otherwise, the evil of migratory divorces would be only partially restricted, and a wife leaving the domicile of her husband where it is to be presumed she is protected by just and impartial laws, could seek relief in her original domicile though she had been absent for any period of time.

2. When the courts are given cognizance of suits where either of the parties were domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that, excepting in cases of adultery, or in the case of a wife returning to her original domicile, relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

Note.—The adoption of legislation recommended by this resolution will put the axe to the root of all migratory divorces sought through fraud or collusion. There will be no longer any reason why persons of honest intention should seek relief in any court excepting that in which they have the right to bring suit by reason of their common domicile. It is so well known as to require no demonstration that the only reason why parties seek other jurisdictions than their own to obtain divorces is because of the different laws enumerating the causes of, or regulating the procedure in divorce in the different states, excepting in the case of an injured wife who has been compelled, in order to find protection and support, to return to the state of her original domicile. The exception made in favor of a wife returning to her original domicile has been explained in a previous note.

There is no objection in principle to states placing any restrictions they deem proper upon the granting of divorces; and if the relief afforded by the laws of a state is restricted by consideration of the laws of the state wherein the parties had their domicile when the offense arose, it is but following the analogy of other branches of the law, particularly the law of contracts, where the courts take cognizance of the legal status of the parties in the state where the relation arose.

3. As long a term as possible should be fixed as a period of residence before the right to sue can be acquired. The Massachusetts rule is three years, and this is recommended as not being too extreme a limit.

Note.—As has been stated in preceding notes, some period of time should be required, even in the case of an injured wife returning to her original home. She lost her citizenship when she removed from the state. It is only as a special favor, and in consideration of her helpless condition, that an exception is made to the general rule of law that her domicile follows that of her husband. In order to make as few exceptions as possible to the general rule expressed in the first resolution, which should be the guiding thought, viz., that relief in divorce should be restricted to citizens of the jurisdiction in which relief is sought, this limitation of time must be insisted upon; and by reason of the many evils arising from the unduly short periods required in some of the states, the Massachusetts, Connecticut and New Jersey rule of three years is recommended for suits in divorce *a vinculo*. In some states a shorter period is permitted, where both parties have moved into the state, and the offence has occurred within that jurisdiction. There would seem to be no objection to making the limitation of residence less than three years in cases of application for divorce from bed and board.

4. An innocent and injured wife seeking a divorce should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at her option, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and restored where they have been abolishd.

Note.—It is proper to say that the sentiment expressed in this resolution is directly controverted by Bishop in his well known text book on Marriage and Divorce, and by Howard, one of the latest writers on the subject. The arguments in favor of retaining this form of divorce, which amounts really only to a qualified divorce or legal separation are: First, it meets the case where, by reason of conscientious objections to a divorce *a vinculo*, the injured wife is restricted to this form of relief; second, it effectually prevents an offending husband from taking advantage of his own wrong. It is not difficult to believe that there are many cases where, simply for the purpose of forcing upon the wife the bringing of a divorce suit in order to free himself from an unpleasant marriage, the husband deliberately commits an offense that will secure him the liberty of re-marriage. Relief is often sought by proceedings for divorce *a mensa* in order to secure alimony, but this is not a controlling reason, because alimony may be permitted by statute in cases of absolute divorce. The text book writers referred to seem to base their objections to this form of divorce on the ground that it is a direct temptation to unchastity on the part of both parties. That this is not recognized in all the states is shown by the fact that re-marriage on the part of the guilty party is sometimes prohibited expressly in cases *a vinculo*. By retaining this form of divorce it leaves to the wife an option to select whichever remedy she chooses. It removes from the husband the temptation of wrong-doing in order that he may marry again. It is true, it does add a permanent and very serious penalty to his punishment during the life of the wife; but it is thought that the well being of society will be sustained by the adoption of this rule, and not the least consideration in favor of it is the fact that it leaves open the opportunity for reconciliation.

5. The causes for divorce would seem to be susceptible of classification into certain groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils

arising from diverse causes in the different states will be very greatly abated if legislation restricts the jurisdiction of the courts to the citizens of each state at the time the cause arose.

Note.—The statement of this resolution does not seem to require amplification.

6. The following causes for divorce seem to be in accordance with modern views:

a. Ante-Nuptial Causes.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Former marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

b. Post-Nuptial Causes for Divorce *a v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of felony.
4. Intolerable cruelty.
5. Willful desertion for two years.

c. Post-Nuptial Causes for Divorce *a m.*

1. Adultery.
2. Intolerable cruelty.
3. Willful desertion for two years.
4. Hopeless insanity of husband.

Note.—This list of causes is suggested as the result of an examination of the statutes of all the states, and a study of the cases, and it seems to be sufficiently comprehensive. It will be observed that causes which, strictly speaking, are for nullity of marriage and not for divorce are covered by this list. In some jurisdictions it may be found more convenient to separate causes for nullity of marriage from divorce causes, but inasmuch as causes, whether for nullity or for divorce, have the same object, namely, the sundering of the marriage relation which stands good until a decree of dissolution is entered, it would seem to conduce to simplicity and directness to include causes for nullity in divorce statutes.

7. Conviction of crime should not be a cause unless such conviction has been followed by a continuous imprisonment for at least two years, and unless such conviction has been the result of trial in some one of the states of the Union, or in some one of the countries subject to its jurisdiction, or in some foreign country as a result of a trial by jury, followed by an equally long term of imprisonment.

Note.—Almost all of the states recognize the conviction of crime followed by imprisonment as a sufficient cause for divorce. The reason for limiting the relief to conviction in some one of the states of the Union, or to a foreign country where the trial has been by jury, is to avoid the possible case of a summary exercise of jurisdiction in a foreign country as the result of a trial not recognized by the American system of jurisprudence as adequately protecting the rights of the defendant.

8. A decree should not be granted *a v. m.* for insanity arising after marriage.

Note.—Insanity is a disease which not infrequently follows marriage as a result, more especially in the case of a wife. There is something repellant to the natural sense of justice in permitting a divorce *a vinculo* where disease has arisen simply by reason of the marriage. It is of the essence of the marriage contract that the parties should remain husband and wife in sickness and in health, and if a decree is permitted for the disease known as insanity, there seems no reason why it should not be extended to other diseases with equal propriety. The only argument that can be advanced in favor of an absolute divorce by reason of insanity is to prevent the birth of children liable to be tainted with the same disease. But so far as the insanity of the husband is concerned, the wife is protected by her right to a divorce a mensa; and no right-thinking man would advocate relieving the husband of the care and support of an insane wife where the insanity had arisen after marriage, and especially if it were as a result of it. If the insanity of the wife is made a cause on the ground that she is rendered incapable for the proper performance of her duties, the same argument would apply in the case of paralysis, and various other maladies. The law, while taking a different view of the marriage relation from that held by some of the churches, none the less recognizes it as intended to be indissoluble; and only by reason of the fact that some cases of wrong-doing by either party utterly defeat the purposes of the marriage relation, permits divorce at all. The introduction of post-marital insanity as a ground for divorce is a long step towards the view that marriage exists, not as a social institution, but as a merely natural connection between persons of opposite sexes, which may be terminated when its burdens have become heavier by reason of misfortune, or at the pleasure of either party.

9. Desertion should not be a cause for divorce unless persisted in for a period of at least two years.

Note.—Obviously, desertion should not be a cause at all, unless maliciously persisted in, and the period of two years is adopted in a very large proportion of the states, and even five years in two.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

Note.—The object of this resolution is to cover the case where the respondent has departed from the jurisdiction of his state, and yet his residence is known; and though he cannot be served with process except by publication, actual knowledge of the suit can and should be brought home to him. It is believed that a provision of this kind will prevent many cases of fraudulent divorce.

11. Any one named as co-respondent should in all cases be given an opportunity to interplead.

Note.—This provision has been introduced to cover the case of an innocent person, and to give him his day in court, where, under existing legislation, at least in many of the states, he has now no opportunity to vindicate his good name.

12. A power of attorney, duly acknowledged, should in all cases be essential to an appearance by the attorney for either party.

Note.—This is a very obvious safeguard against fraudulent divorces.

13. Hearings and trials should always be before the court, and not before any delegated representative of it.

Note.—This is one of the most important reforms to which this Congress should direct its attention. There is no corrective of fraud and collusive practice stronger than publicity, and notwithstanding the fact that in many jurisdictions, where cases of divorce are referred to officers appointed to consider them, strong restrictions are thrown about the hearings, none the less it is well known that the opportunities for fraud and collusion are indefinitely

multiplied by the system of appointing referees, masters and commissioners. No more important duty rests upon the court than the decision of causes where it is sought to sunder the marriage relation. No argument of inconvenience, or of the scandal likely to be brought about by open hearings of cases, should deter the legislatures of the different states from insisting that the witnesses should always give their testimony in open court, face to face with the tribunal selected to decide the case.

14. A decree should not be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the respondent.

Note.—This would seem so obvious as to require no demonstration, because any other rule makes collusion easy.

15. A final decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not be entered until the lapse of a reasonable time after a decree *nisi* after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

Note.—The adoption of this rule will work a change in the divorce laws of very many of the states. It must be admitted that a large, if not the largest proportion of divorces are sought by one or both of the parties in order to a re-marriage. By requiring a reasonable period to elapse between the hearing and decision upon the merits of the case, and the entering of a final decree, a brake is put upon the hasty re-marriage of either of the parties; and opportunity is afforded, both to the state and to the parties, or either of them, to correct error, or relieve against fraud; and it is difficult to conceive any valid reason why the state should not interpose some period of time after hearing on the merits before the parties shall be relieved of the responsibilities and obligations they have voluntarily assumed.

In California the decree is interlocutory in the first instance, and after the expiration of one year, on motion, the court may enter final judgment granting the divorce.

In Colorado neither party to a divorce can marry any other person until after the expiration of one year from the granting of the decree.

In Idaho no divorced person can re-marry within six months after the decree of divorce.

In Illinois neither party can marry again within one year from the date of the decree; and the person decreed guilty of adultery cannot marry again for two years.

In Kansas the decree does not become absolute and take effect until the expiration of six months.

In Massachusetts decrees of divorce shall, in the first instance, be decrees *nisi*, and shall become absolute after the expiration of six months from the entry thereof, unless the court, before the expiration of said period, for sufficient cause, upon application of any party interested, otherwise orders.

In Montana the innocent party cannot marry until after the expiration of two years; and the guilty party cannot marry until after the expiration of three years from the entry of the judgment of divorce.

In Nebraska it is unlawful for any one obtaining a decree of divorce to marry again during the time allowed by law for cummencing proceedings in error, or by appeal for the reversal of such decree; to wit, six months.

In New York final judgment for a divorce is not entered until three months after filing of the decree (or interlocutory judgment), and is then entered as of course within thirty days, unless for cause shown the court otherwise orders.

In Oregon neither party can contract marriage with a third person until the appeal therefrom is disposed of, or until the expiration of the period allowed by law to take such appeal.

In Rhode Island no decree becomes final until six months after decision.

In Wisconsin a divorced party cannot marry within one year after the divorce.

The following is recommended as a suitable provision:

Decrees of divorce from the bonds of matrimony shall, in the first instance, be decrees *nisi*, and shall become absolute after the expiration of one year from the entry thereof, unless appealed from, or the court before the expiration of said period, for sufficient cause, upon the application of either party, otherwise orders; and at the expiration of one year such final and absolute decree shall be entered as of course, upon the application of the libellant, unless prior to that time cause be shown to the contrary.

16. In no case should the children born during coverture be bastardized excepting where they are the off-spring of bigamous marriages, or the impossibility of access by the husband has been proved.

Note.—This provision will commend itself to any one who considers the unfortunate position in which the innocent off-spring of a marriage, legal until dissolved, for whatever cause, would be placed by the adoption of any other rule. The exception of the children of bigamous marriages is of course essential. Bigamous marriages are really no marriages at all. They are null and void, and all the consequences flowing from them betake of their character; but in no other case should the children born of a marriage be rendered illegitimate.

The PRESIDENT: The resolutions which have been offered by the gentleman from Pennsylvania will, under the regulations which you have made, be submitted to the Committee on Resolutions to report.

JOHN C. RICHBERG, Illinois: I move that there be added to this Committee on Resolutions of seventeen representing seventeen states of the Union, an additional committeeman from each state not now represented in the Committee, and that that committeeman be reported on the roll-call by the delegates from the different states.

F. H. BUSBEE, North Carolina: The State of North Carolina is not represented on the committee; but as we understand it, any delegate from any state having any suggestion to make would be very gladly welcomed by the committee, and his suggestions will receive due consideration there. Again, if we have a delegate from each state, it will leave very little for the Congress to do. It seems to me that if this committee of seventeen shall recommend to the body our resolution, the next proposition will be to go into a committee of the whole to consider the report of the Committee on Resolutions, and then every member will have the fullest opportunity to be heard. It ought to be considered by a committee of the whole. That will give every delegate an equal opportunity, and we are sure the committee will be very glad to hear any suggestions.

SENECA N. TAYLOR, Missouri: My first impression was in keeping with the amendment offered by the gentleman from Illinois. Due reflection tells me I am wrong. I am inclined to think if we have any suggestions from the various states the Committee of seventeen will be very glad indeed to hear from them.

The motion was duly seconded.

RALPH W. BRECKENRIDGE, Nebraska: It seems to me that two or three of the gentlemen who have spoken, have said what there is to say on the matter; but as a member of the committee, I am sure the committee will welcome any suggestion made by any member of the Congress not on the committee; and, as I understand, this is a Committee on Resolutions, not necessarily to report a Divorce Code.

Even as a committee to report a code, it is within the power of the Congress to cut the thing to pieces, and dispose of the resolutions which may be presented by the Committee on Resolutions. The Committee of seventeen is ample enough for the purposes for which it was created.

EDWARD W. FROST, Wisconsin: As the only member of the delegation from my state, a state which is not represented in the Committee of seventeen, I am heartily in favor of it is it stands. We will have ample time in which to discuss this matter in the committee of the whole. I know that any resolutions which are offered, or suggestions made by outsiders, members of the Congress, will be welcome, and I think a committee of 42 or 44 entirely too large.

The PRESIDENT: I may say there appears to be a misconception in the minds of the Congress. Up to this time there has been no suggestion presented to them for the formulation of a code. What has been referred to the committee is the presentation of some resolution. The motion before the Convention now is to add to that committee, so that there shall be a representative from every state, which would make a committee of forty-two instead of seventeen.

The question being as stated by the Chair, it was not agreed to.

B. F. MEIGHEN, West Virginia: I offer the following resolution:

Resolved, That the President of this Congress appoint a committee of five members of this Congress to consider the propriety of adopting a uniform Marriage License Law, and with power to report such a uniform Marriage License Law to be recommended for adoption.

The PRESIDENT: Under the rule, this resolution goes to the Committee on Resolutions.

TALCOTT H. RUSSELL, Connecticut: I move that this Congress adopt the following:

The jurisdiction of the courts of this state in suits for divorce shall be confined to the following classes of cases:

First. Where both parties were domiciled within this state when the action was commenced.

Second. Where one of the parties was domiciled within this state when the action was commenced, and the defendant was personally served with process within this state.

Third. Where one of the parties was domiciled within this state when the action was commenced, and one or the other of them actually resided within this state for one year next preceding the commencement of the action.

The PRESIDENT: This will go to the Committee on Resolutions.

OTTO J. KRAEMER, Oregon: In order to enlighten myself, I prepared a comparative table of the divorce laws of the various states. I have copies with me and think it might be of some use to the delegates present. If desired, I would willingly furnish all present with a copy.

The PRESIDENT: The gentleman from Oregon offers to present to the delegates a comparative table of divorce laws. We shall be very glad indeed to have them, I am sure.

JOHN C. RICHBERG, Illinois: In view of the fact that in all probability, we will not get through with the reception by the President until 3.15, and we will not perhaps get here until 4 o'clock, and it is the intention of the convention to adjourn at 5.30, there doesn't seem to be any good reason why we should meet for an hour this afternoon. Perhaps when we adjourn, we had better adjourn to meet to-morrow morning at 10 o'clock. Then we can hear the report of the Committee on Resolutions, and go into a committee of the whole.

I move that when we adjourn, we adjourn until 10 o'clock to-morrow morning. The motion prevailed.

Adjourned.

SECOND DAY.

Morning Session.

February 20, 1906.

The Congress resumed its business at 10 o'clock A. M., President Pennypacker in the chair.

WILLIAM H. STAAKE, Secretary, Pennsylvania: Mr. President, in accordance with the programme which has been announced, I now have the pleasure of introducing to you, sir, and to the Congress, the Right Reverend William C. Doane, D. D., Bishop of Albany, Rev. William H. Roberts, D. D., of Philadelphia; Rev. Dr. Charles A. Dickey, of Philadelphia, Bishop A. W. Wilson, of the Methodist Episcopal Church, South; Rev. Edward P. Johnson, Rev. Dr. Samuel W. Dike, Dr. A. W. Pitzer, John E. Parsons, Esq., and Francis Lynde Stetson, Esq., delegates from the Inter-Church Conference. These gentlemen are here, and desire a hearing before the Congress.

The PRESIDENT: I am sure it is a great gratification to all of us in the convention to know that we shall have the advantage of the presentation of the thought of this delegation. They have made a special study of the subject, and will present the benefit of that study to us; and I know that it will be helpful to us in reaching a conclusion. I have the pleasure therefore, ladies and gentlemen of the Congress, of presenting the delegation to you, and we shall be glad to hear from them.

BISHOP DOANE: I must add the name of Rev. Dr. McKim.

Mr. President, as Chairman of the Inter-Church Conference, and also Chairman of the committee appointed by that Conference to head this delegation, it behooves me, in the first place, to lay on your table the documents to which the Inter-Church Conference desires to call the attention of this Congress. First, there is a copy of the proceedings of the various meetings of the Inter-Church Conference; next, a copy of the draft of an act concerning divorce and re-marriage, representing the views of the Conference, if action is to be taken regarding re-marriage; and, third, a pamphlet containing documents of the Inter-Church Conference on marriage and divorce.

In presenting the gentlemen who are here with me as representing the Inter-Church Conference, I desire, on their behalf, in the first place, to recognize the valuable position which has been taken by the President of this Congress, the Governor of the State of Pennsylvania, in regard to this most important and burning question. And then, I want also to claim relationship to this Congress, not of affinity, as the English tables go, but of kinship; and I think I can prove that there is a sort of ancestral relation which the Inter-Church Conference holds to the Congress meeting here to-day. Organized in 1903, the Inter-Church Conference had a meeting in Washington in January, 1905; and at the close of that meeting we had the honor of a reception by the President of the United States to whom we presented the views of the Conference, with which we found him in very warm and earnest sympathy. Within ten days after that time the President sent a message to Congress, urging some co-operation among the states in regard to uniformity of the laws relating to divorce. And when the Governor of Pennsylvania signed the act of the General Assembly of Pennsylvania, which called for a meeting to confer about and to co-operate with each other of the legislatures of the different states, he referred directly to the message which the President had sent to Congress. So it seems to me, with only two degrees remove, we may claim the privilege of having had a hand in the origination, as we are very glad to have a hand in the organization, of this most important Congress.

Reading, as I had the pleasure of reading yesterday, the Governor's address, and the report of your proceedings, it seems to me that it is hardly necessary for me to dwell at any length upon what we consider to be the great vital, essential, fundamental necessity of some prompt and practical and powerful dealing with this great question, which is really destroying the homes by taking away the corner stone upon which they are built; which is breaking up and distracting and disturbing the family relation; and that family relation, from the creation of man, is really the ground upon which all state and social and civic safety rests. In the Inter-Church Conference, we are naturally approaching this subject from a different standpoint, and along somewhat different lines; but I undertake to say that they are lines which are not parallel with each other, which are not crossing each other in any way, but are rather converging lines. It is quite right, it seems to me, that the Christian Church should take the lead in a matter which so deeply concerns society. It is quite natural that the Church should take its ground upon somewhat higher principles and convictions than the State can take. It is quite natural and right that what we are aiming at should be some approach to the consciences of men and women—not merely to secure legislation which shall control their action, but to secure an impression made under the influences of the holy Spirit of God which should govern and control the motives of men and women.

We are all of us holding, I think I may say, upon the most essential points, absolutely accordant views. There are individuals among us who hold, as I do absolutely, to the indissolubility, except by death, of the marriage bond. There are those of us who approach this question not precisely from that standpoint, but only upon the strongest possible sense of the extreme sacredness of marriage. There are, among the fourteen churches represented in this conference, marvelous agreements. I think I may say that, with one single exception, all the churches represented in this Conference own that nothing but post-nuptial infidelity—speaking in plain English, the sin of adultery—can be considered as dissolving the marriage bond.

Now, then, Mr. President, what we are after is that we may put ourselves alongside of any legislation that such a Conference as this may recommend. We feel that we can appeal to such a Congress as this with far more hopefulness than we could to any legislative body; because I take it that the object of this Congress is largely to lift up the tone of public opinion toward a higher and purer and better ground. I think I may say that all of us feel that whatever advantage may be gained by legislation can only be gained by legislation that is backed by and built upon public opinion. You are concerned, sir, with the proposition of making better laws; we are concerned

with the proposition of raising public opinion to a higher and better level; in order that, in the first place, the legislation may be toned up to the highest possible point, and, in the next place, it may be legislation which can be enforced, because the opinion of the people is behind it.

And that public opinion is formed, as things so often are in the Providence of God, in a strange and marvelous way; formed not only by the urgency on the part of the people who are set to be teachers as to what the true scriptural teaching is, what the religion of Jesus Christ requires, but formed also in that wonderful way by which Almighty God makes the wrath of man to serve him—formed by the horrors which we are shocked at every turn to behold—such a thing, for instance, as happened the other day in the State of Massachusetts, and which absolutely was intended as a compliment, as a courtesy, a recognition of their interest in the marriage of the daughter of our great President. I refer to the travesty of marriage that was performed in a building that called itself a church, only the other day, where a little girl of eight was selected to represent the bride, and a little boy of nine to represent the bridegroom, and the President and Mrs. Roosevelt, and the members of the Cabinet, all represented in this melodrama, this travesty, this caricature, which one can call I think by no other name than a piece of absolute blasphemy. That is the kind of thing, it seems to me, that Almighty God is using to rouse the people of this country more and more to recognize and realize the horror of the frequency and facility of divorce. Gentlemen, that is what we want to press,—the sanctity of marriage. I have no manner of doubt but that the carelessness and levity with which marriage is too often entered into has a good deal to do with the frequency of divorce. I know that people entering upon that solemn estate have been known to say that they were trying an experiment; if it proved unsuccessful, they would be divorced, and try it again. It is absolutely certain that those little beginnings of friction, which lead by and by to fraction, would be absolutely avoided, if it were recognized and realized that these two people had come together really for better, for worse, and had to learn to adapt themselves each one to the other; whereas, allowed to run on, it leads finally to those alienations which lead finally to separation. Let it be once realized and understood that divorce, if not impossible, is absolutely difficult to obtain; let it once be realized and recognized, both *in foro conscientiae*, and in the legislatures and the legal tribunals of the state that the separation from bed and board may be and must be allowed in morality and in charity to vicious cases, but that the separation from the bond of marriage, if it is not absolutely impossible, as I believe it ought to be, is possible only under the most extreme cases of necessity, and we shall have, I

believe, something at any rate that would arrest and stop this foul tide of divorce which really is polluting—I do not think that is too strong a term to use—is polluting the minds not only of the men and women who are concerned in the act themselves, but of the young people who are in train for their positions and their duties in social life.

I saw the other day in one of the English newspapers a copy of a photograph which was called Church and State. Thank God, we have no alliance of Church and State in this country, which either embarrasses the church or embarrasses the State; but, thank God, there is more and more coming to be a recognized alliance between the Church and State, between the teachers of religion and the promoters of morality. Now, this picture represented the venerable Dean of St. Paul's making the perilous passage from the deanery across Ludgate Hill to the Cathedral, and he was supported, as he is every day twice going and coming, by a policeman who stopped the omnibuses and the cabs and the crowd, and took the old man safely over to church and brought him safely back to his home. That is the relation which I think ought to exist between this Congress and our Inter-Church Conference, between the State and the Church. It is the connecting link, mind you, between the House of God and the home; and as we pass from the one to the other, back and forth, we are glad to give our countenances and our sympathy to all legislation; we are glad to be sustained and supported by proper legislation, both in regard to the sanctity of marriage and to the difficulties of divorce.

The PRESIDENT: I now have the pleasure of introducing to you Mr. John E. Parsons, of New York.

MR. JOHN E. PARSONS: The Inter-Church Conference consists of a body in which are represented fifteen or more of the important denominations of this country; and, back of that organization is that great church, with its enormous membership, which has always taken and now takes an extreme view with reference to the causes for which divorce may be permitted. During the three years in which the attention of the Conference has been more particularly addressed to this subject, it has reached certain views, it has been called upon to recognize the gravity of the situation, it has perhaps had especially impressed upon it the possible danger which might come from any attempt to deal with this subject; because, while public opinion may be regarded as irresistible in its force, while this Conference has recognized from the beginning that it has made an enormous step in advance of a keen spirited public opinion, none the less there remains the possibility that public opinion may be all misdirected, and then that its irresistible force may lead to results

which may be pernicious rather than those which result in marked progress and great advantage.

One of the very first subjects which we have been called upon to deal with is that of the uniformity of the law upon the subject of divorce and re-marriage; and that generally is assumed to mean uniformity in respect to what, by acts of the legislature, should be recognized as a cause of divorce. But short of that, long before you reach that subject, is the possibility of uniformity in respect to a great many matters which bear on the relation of husband and wife, and in respect of which it may be easy to bring about as a result a correspondence of views, when, if attention were addressed to the other subject, the difficulties are correspondingly great.

Since I have had to do with this subject, communications of various kinds have reached me, one of which I hold in my hand and which comes from a member of my own profession, practicing his profession in a state far beyond the Mississippi River, and which is entitled "Marriage, Annulment, Domicile, Divorce." It is an argument in favor of the advantages presented by the state in which the writer practices his profession—the advantages presented by that state to those who desire to sever the marriage relation; and it goes one step beyond what is recognized by my profession as professional ethics, in that it constitutes an advertisement of the writer, and an invitation that if there is a desire to have the marriage relation severed, not only to come to his state, but to employ him as the lawyer. Now, he has grouped together, in an able way, the law of the various states, the decisions of the Supreme Court of the United States, and decisions of the courts of other states, and he has gathered together a statement of incidents, occurrences, in the main, of cases in his own state in which he was successful in obtaining a divorce. But he tells this story—and it seems to me that it makes the strongest kind of an argument for your consideration of this subject; some years ago in my own state—and perhaps, by way of preface, I should say that my own state holds very conservative views on this subject, and permits divorce only for one cause—in my own state we were all agitated—that perhaps is the proper expression to use—by having our attention called daily to a scandal which was taking place in the courts where a woman undertook, under the laws of the State of New York, to obtain a divorce from her husband. The case was tried in a capable court, before a wise judge; it was defended; witnesses were heard on both sides; the case was carefully considered, and the decision of the court was that no cause existed by reason of which a divorce should be granted between those parties. A few months after that the papers in New York had a telegram from a far western state—I do not give the name; I have not intended to give the names of the parties—to the

effect that this same question was tried in the courts of that State, and with exactly the opposite result.

Now, should this be possible? What does it mean? It possibly means collusion; it probably means collusion. And one question which you are called upon to consider, which we are all called upon to consider, is what safeguards are possible to prevent collusion, which may constitute imposition upon a court, and may therefore result in obtaining from a court a decree which does not correspond with that which is right and fair and just. It certainly points to the possibility that if the judges, or courts, would be more careful; if they would recognize the obligation which is imposed upon them, they might protect against possibilities of this kind; because it seems to me that any inquiry by the court would have disclosed the fact that this same question had been tried, and tried before a suitable tribunal, and with a result the reverse of that sought in the particular action. I am sorry to say that this reflects, to a certain extent, upon the members of my profession—and my profession, with respect to this matter of divorce, is very largely on trial, because it is through their inattention and by their instrumentality in a very considerable measure that it is possible that cases of this kind should successfully go through the courts. Any case of this kind means a failure, in a particular state, never mind how lax its laws may be, to stand up to the standard imposed by those laws; because the laws in all the states contain provisions in respect to domicile or residence; the laws of all the states require some cause, which will be decreed to exist, and by reason if which divorce may be granted. And I will undertake to say that, in the large proportion of those cases which are most scandalous, that is to say where parties being unsuccessful in New Jersey or in Connecticut, or in New York, or Pennsylvania, go elsewhere that they may obtain a divorce—in a large number of cases, both in respect of causes and in respect of residence, there is a failure to comply with the laws of the particular state.

Then comes this large question which we have concerned ourselves about, and which, as I understand, it to be dealt with in a practical way by this Congress,—how shall evils of this kind be remedied? How shall they be prevented? How shall it be possible to bring about by legislation that which preserves the sanctity of the family and the purity of the home? This is a subject which concerns us all. This is a subject which is near and dear to the hearts of us all. We are all children of mothers, many of us are husbands of wives, many of us have daughters; it is their condition which is at stake, and as their condition is at stake, so is the case of all of us, husbands, sons, brothers, fathers.

Now, what can be done to aid this situation? Well, in the first

place we of the Inter-Church Conference congratulate ourselves that the formation of that Conference was in a sense the outworking of a public opinion directed to this subject. Certainly the appointment of these delegates from forty-one or forty-two out of the forty-five states of the Union is the strongest kind of manifestation that this subject is at work, and that it is going to produce results. And the question really to be considered is what with safety may be advocated as the result of your action. Upon that subject, I have only one thing to say; but this one thing is very dear to the hearts of many of us, and plays an important part in the consideration of this subject. When uniformity of law is talked about as applicable to this subject of divorce, what is usually in the minds of those who consider the subject is uniformity with respect of causes of divorce. But short of that, there is a very wide field which needs to be considered in order to give to each state the right to legislate upon the subject. None the less these evils may be minimized. In all events, there may be brought about adherence in the particular state to those laws which it has seen fit to enact. I hoped, perhaps I might better say I had dreamed, as one of the possibilities of this action, that in all the states the standard might be exalted to that which prevails in the state of New York. But whatever may be done by this Congress, let there be no temptation, no invitation that the standard shall be lowered. The hope is that everywhere through this whole Union the standard shall be strengthened, shall be exalted. I pray you, gentlemen, do not permit any stepping, any looking backward.

The PRESIDENT: I would like to ask Mr. Parsons whether it is true, as alleged, that in his state sometimes men commit the offense, or pretend to commit the offense, in order to secure the divorce?

MR. PARSONS: That is not permitted by law, of course.

The PRESIDENT: I understand that, perfectly. But we are sometimes more influenced by fact than we are by law.

MR. PARSONS: But I need not inform the distinguished President of this Congress, or its members, that the members of my profession on occasions may be able to obtain from the courts that which they are not entitled to.

The PRESIDENT: It is all well enough for us to listen to the lawyers. We have any number of them in this Congress, and I am quite sure we shall hear from all before we get to the end of our sessions. There is no lack of legal learning here; but we now have a chance to listen to the clergy, and since it may be, with some of us, a rare opportunity, I think it ought to be embraced. We will now have the pleasure to listen to Rev. William H. Roberts, of Philadelphia.

REV. WILLIAM H. ROBERTS, D. D.: Mr. President, Ladies and Gentlemen: As Secretary to the Inter-Church Conference on Marriage and Divorce, permit me to draw your attention, and through you the attention of the members of this Congress, to the documents which are here for distribution; and if they could be distributed, I think it would help in connection with the further consideration of this matter.

The Inter-Church Conference on Marriage and Divorce, as has already been stated, has now been in existence about four years, and began to take shape in official action by the General Convention of the Protestant Episcopal Church. That action was followed by official action by other of the great Christian denominations of this country. You will find, at the close of this pamphlet in blue, on pages 7 and 8 of the second division, a list of the official representatives of the different Christian denominations composing the Inter-Church Conference on the important subject which is before this Congress. With reference to the constituency represented by the Inter-Church Conference, permit me to draw your attention to the fact that this constituency is Protestant, is Evangelical, in the broad sense of that term, represents a force in connection with public opinion in the country which is very potent. The delegates appointed to this Inter-Church Conference are representative of some twenty millions of actual communicants of the Protestant churches of the United States. In addition to the actual communicants, we may at least estimate that there are some thirty millions of adherents; so that we stand numerically for a majority of the citizens of the United States, both male and female; and we stand, further, for that section of our population which adheres to high moral standards in relation to human conduct.

Now, as to the action of the Conference: let me draw your attention to the resolutions of the Conference as they appear in the second division of this pamphlet; and in connection with the action of the churches, you will find official action by the supreme legislative or advisory bodies of the Protestant and Christian churches of the country. I will turn to page 4, under the head "Presbyterian Church in the United States of America," not because that is the church with which I am directly connected, but because the action recommended by the Conference and approved by the General Assembly of that Church is found in consecutive order as printed on that page. In approaching this question of divorce, the Inter-Church Conference was obliged to take up the question of marriage, and for the reason that the two are to a very great extent connected. Ministers of the Gospel are the persons who perform marriages in our country. The first recommendation of the Inter-Church Conference was to the effect that all ministers should refuse to perform the marriage cere-

mony in the cases of divorced persons, excepting as such persons having been divorced upon grounds and for causes recognized as scriptural in the standards of the church. The second resolution approved by the Conference, and sent down to the churches, was as follows: "That, recognizing the comity which exists between churches represented in the Inter-Church Conference, acknowledging, as they do, the law of Christ alone as supreme, we advise each minister under the authority of this Assembly to refuse to unite in marriage any member of any such church whose marriage is known to such minister to be prohibited by the laws of the church in which such persons hold membership, unless such minister believes that in the peculiar circumstances of a given case his refusal would do injustice to an innocent person who has been divorced for scriptural reasons." The third resolution was the following: "That ministers should refuse to marry divorced persons, except the innocent party in a case where the divorce has been granted on scriptural grounds, nor then until assured that a period of one year has elapsed from the date of the decision allowing the divorce."

I have read these resolutions in order to emphasize the position which the churches take. The churches, through their supreme advisory or legislative body, have agreed to the position taken by the Inter-Church Conference; they have gone to the very root of the matter, which is the ceremony of marriage, for they advise a certain definite course; and, where there has been power in church courts, they have enjoined ministers to follow that course. So that, as I understand the position of the churches, it is very clear cut; it is definite; there is a determination on the part of the Christians of this country connected with the great Protestant denominations to take hold of this matter, and to take hold of it in a manner to produce results.

Standing, as we do, therefore, for the attitude of the churches, we come, Mr. President, and ladies and gentlemen, to you who represent the legislative side of this whole subject, as the State has to deal with it. There are many of us who hold that the State, equally with the churches of God, owes allegiance to God, and is under the authority of the laws of God; and we come to you, and ask you to give practical shape to that public opinion which has made itself manifest in the churches. With that practical work, the churches, as churches, have nothing to do. The line of separation between Church and State in this land is an effective one, and is one which should be maintained; but the Church needs the State as an ally to maintain these high moral standards to which the Church feels that she is called of God; and earnestly do the churches ask you here to give form to practical action, that the legislatures of the states shall be brought to bring about uniformity in legislation on this great

matter of divorce. And it would be to many of us an exceedingly grateful thing, and a very happy result of this Conference if there were legislation recommended in connection with marriage as well as divorce, for it is the ceremony of marriage which is at the root of all moral questions affecting the welfare of the family and of the home.

I shall not take any further time to speak upon this matter, and thank you cordially for the opportunity to say a word or two thereupon; and I do hope that Church and State will go hand in hand in securing the sacredness of marriage and the sanctity of the home along all possible lines. Let us do that which we can for the preservation of the family, that relation which is fundamental to human welfare, both in this life and the life which is to come.

The PRESIDENT: I now have the pleasure of introducing to you, ladies and gentlemen, Bishop Wilson, of Maryland.

BISHOP A. W. WILSON, Maryland: Mr. Chairman, the work of my life has been done for the most part in the South, where we have had comparatively little trouble upon this question. The general sentiment, the high tone and character that has prevailed throughout the South, has saved us from the degradation and disgrace of too easy and corrupting divorce. But we are not beyond the power of example; and, as wealth increases and immigration from the north to the south comes into our region, we apprehend that some of the same symptoms that have shown themselves yonder will break out on our part. We do not want it. It is hardly worth while to argue a question of this sort. It is one of those things where the truth, to use a Pauline phrase, is made manifest to every man's conscience in the sight of God. We know what the relation is—every man that has a wife and a home, every man that has gone through years of experience, building himself up and building his family up under the aegis of a pure and indissoluble matrimony. Our trouble does not lie with the men who stand in the fore front, even in the legislative circles of the land; it lies with the catering to the tendency among the orders of people whom our legislators feel bound to represent. They must not ignore their demand; they have to reckon with their constituents; and, as the constituents are, the legislation will be. You may legislate as much and as vigorously as you please in any state or all of them; you may have uniform legislation; but you will have the cry come up after all, "Let him that is without sin among you cast the first stone," when the case comes for trial; and the people will charge you with being righteous overmuch, and not caring for the true interests of your constituents. For that reason, if for no other, it behooves the church of this land to do all that in it lies to cultivate, or to create where it does not exist, a public sentiment on this question that shall dominate even legislatures.

Under existing circumstances, we do not expect you and your legislation to conform to the righteousness of the kingdom of God. You could not do it. The righteousness that you are trying to conform to is the righteousness that suits the kingdoms of this world; that will satisfy your constituents, that will build up what we regard as a sound and healthy citizenship in the State. We agree with you. you cannot do anything more than that; but, as Bishop Doane has very well said, the lines of operation of the two are not parallel, and they do not cross; they are converging. The time is coming when the legislation of the country, under the pressure of a sentiment and a conscience created by the church of God, will be compelled to take a position that will satisfy the highest as well as the lowest of our constituents.

We have to compromise. Our Lord himself, in connection with this very question, said a word that sometimes we do not get the full force of. "This saying is not for all," He said, "but for them to whom it is given; not all men can bear it;" and we do not propose to bring any undue pressure in establishing any principle of righteousness. Where it is involuntary, does not spring out of the natural growth of sentiment and conscience in the people, it is of very little use. But, begin at the bottom; teach the children of all classes of people, and let them understand just what the churches mean by this thing, and how it is a foul blot upon our civilization, a disgrace to our citizenship, a permanent hurt to our men, our young manhood and womanhood, that such things should exist; and by and by the cry will go up with all force, from all sections of our land and all classes of our people, "Purge us from this iniquity," and they will do it. We are bound to look at it in that light. How much this Congress may be able to do, I do not know. It has started under most favorable omens. It is a great cause for rejoicing that such a Congress could have been brought together, that attention has been directed to this thing, and the thought of the people and of the legislators of the land fixed upon it. It has gone now through all the creeds, from the White House through our Senatorial and Representative House and our legislative chambers in the states; everywhere it has been touched, and there is an increasing desire—I dare to say it—for some remedy for the evil that threatens the very foundation of the home and threatens the purity of our social life and of our citizenship. I think I need say no more. My own church has acted with emphasis on the question. We allow no marriage of divorced persons, except in the one case, the case of the innocent party, where the scriptural ground is cause of divorce. We try to live up to it. We have trouble with state legislation, but the church, our Church has not troubled itself with state legislation. It goes ahead, and preaches to the conscience of

the people, creates a sentiment, and lets the regular processes of God's word bring about results through legislation and in every other way.

BISHOP DOANE: Mr. President, I want to acknowledge the courtesy with which you have heard so many of us. I only ask as a favor that Mr. Stetson might be allowed to present to you the act which the Conference would approve of.

The PRESIDENT: We shall be glad to hear him.

FRANCIS LYNDE STETSON, Esq.: Mr. President, Ladies and Gentlemen: The Inter-Church Conference represents fifteen churches which are not altogether in agreement with themselves in their membership, or with each other, as to causes of divorce. And, again, the Conference being a representative body of the churches, and not a body politically representative, recognizes the distinction that has to be taken between the action and the recommendation of the Conference, and the action of legislative bodies representing the political power of the State and of the United States. If we were engaged upon the consideration, on this occasion, of the causes of divorce, we might recognize that this body is gathered here upon suggestions from the highest and most important sources concerning the laxity, and not the severity, of the conditions permitting divorce.

The President of the United States, upon the 30th of January, expressed himself thus: "There is a widespread conviction that the divorce laws are dangerously lax and indifferently administered in some of the states, resulting in a diminishing regard for the sanctity of the marriage relation." That declaration or message of the President of the United States was followed almost immediately by the wise and helpful and hopeful communication of the Governor of the great Commonwealth of Pennsylvania, under whose call you are meeting, and under whose presidency you are assembled, and who in his speech yesterday sounded the same note of high morality, out of which issued the call or message of the President of the United States. And if the causes of divorce are to be considered by this body, certainly it seems to me that the conclusion of its considerations would be, not the relaxation, but the restriction of the causes of divorce. I say frankly, for one, that the course I should take here would not be as strict as that I would recommend to the representative body of the church with which I am connected; but we are not here as representatives of the several churches to consider or present reasons affecting or governing the causes of divorce. We are here simply with a plea for publicity, decency, and for comity. That is all we are asking for. We ask that if people find the conditions of married life so onerous that they must make of them a

public scandal, that the publicity shall be made matter of record, and official. We ask that, if the people are to escape from the bonds of matrimony, as they regard it, and which they generally have assumed with the utmost publicity, they shall make their escape, not as a thief in the night, but under the protection and under the open manifestation of the public decree of a court of justice registered, not clandestiuely, and not made the occasion of a mere change of cars at a station, from one union to another. And we ask, furthermore, that there shall be comity. We are here from forty-five sovereign states; and there are many of our states which treat other states as though they were not sovereigns but enemies, and suspicious characters, to be eluded. We have in our State a public policy which is not acceptable to our sister states; still, it is our policy; it is a policy which the people of our State through more than a century have chosen to declare and continue. To many—I do not say of us, but—to many it appears that that public policy is as much mistaken as our unique and severe public policy regarding interest on money. Nevertheless, it is our policy. Are we not entitled that our neighbors and our sister states shall regard and respect, at least for our own citizens, the policy that we have adopted, and not open harbors of refuge for those who are fleeing from the laws which we have undertaken to enact and to enforce within our own boundaries?

Now, upon those three grounds—the ground of publicity, the ground of decency, and the ground of comity, the Inter-Church Conference and its representatives have found themselves able to concur, and to concur not only with each other, but to concur with the lawyers of the country, whom—permit me for a moment to abandon my representative capacity and speak from the feelings of my heart, I regard as representing not only sense but morality in the highest degree—the Inter-Church Conference have found themselves able to concur with the lawyers of the country. We adopted almost identically the recommendation of the Committee of the American Bar Association, being the same recommendation that had been prepared by the Conference of State Commissioners for the Promotion of Uniformity of Legislation in the United States; and that recommendation you will find upon page 7 of the blue pamphlet. That Act concerning Divorce was unanimously adopted by the representatives of twenty millions of people in our Conference; and Mr. Parsons very properly called attention to the fact that, to the extent that this goes, while we may not speak as representing a greater or larger number, we may assert that those views would not be unacceptable to that great and historic church which declined participation in our Conference solely because its high dignitaries declared they recognized no grounds for divorce whatever. This document therefore represents the expression of the American

Bar Association, of the State Commissioners on Uniform Laws, of the Inter-Church Conference, representing over twenty millions of people, and of the great church with its vast membership in this country, which would have no divorce whatever. That recommendation we ask you to consider as worthy of your acceptance and your recommendation.

The PRESIDENT: This closes the official list. Every man, however, has his own fancies, and I should like to hear a word from Rev. Dr. Charles A. Dickey, if he will gratify us.

REV. CHARLES A. DICKEY, D. D.: Mr. President: I suppose as I am not an official, I can do as I please, and depart a little from the general tone. I consider it a very great honor, Governor Pennypacker, to address a meeting over which you preside, and a conference which has been largely called by your influence. You will find out, my friends, before you are through, that you have a presiding officer that you can tie to. We have learned it to our joy in Pennsylvania during the last six weeks. And I consider it one of the auspicious and very significant factors that this movement among the states will have the influence of our Governor, whom we trust and whom we revere. I think if anything could turn me from my Presbyterian home, in which I was born, it would be the influence of the Chairman of the Inter-Church Conference, Bishop Doane, to whom we owe so much as a Conference for the progress of the sentiment as it is represented by the churches. We know among ourselves Bishop Doane's high position regarding this whole question; and yet it has been very largely through his courtesy and patience that the representatives of these fifteen churches have been brought to such unanimity regarding this whole question. I do not claim that that has in any way occasioned this movement, but I do believe that the addresses which have been sent to the public, and that the action that has been taken by this Inter-Church Conference during the last four years has had much to do with awakening public sentiment and with bringing together this Congress of representatives from the different states of the Union. I feel as though I could sing, "Let me depart." When we began this work, the way looked very dark, and the task looked very difficult; but I think I see the dawn of a better day for the whole country; and I believe the influences are in this council chamber that will bring about more speedily than we had reason to hope a condition in our country which will be to its honor and glory, and purity and power.

If a pestilence was coming across the ocean in ships, we would have no difficulty in getting a unanimous vote to meet it at the shore, and to prevent it if possible. If some great calamity was threatening our nation, there would be no north, no south, no east, no west;

there would be but one sentiment—to rise and unite in defense. But, if I am right in my convictions, this great nation that we all believe is Immanuel's land, and to be the redemption of the world, is being threatened by worse than any pestilence than can be brought in ships, or any calamities that can come from the clouds. For, let the foundations of our homes be meddled with, and we will have no foundations for our country. Our nation is made up of its homes; and we should rise and unite, and give up where we may have prejudices, and join where we can agree, that we may help to deliver our land from this awful pestilence that is increasing and coming into the churches. It is not a State matter alone. Our churches are being dishonored by laxity in divorce.

Now, I do not wish to take advantage of a courtesy to say what is in my heart, and prolong this conference; but, may I make just one plea from our standpoint to the representatives of states? Is it not possible for you to unite, as we have united, at least on the basis of comity. Our churches have given up preferences, and, in a measure, convictions, for this unity; and if the churches of this land, differing in their opinions and in their beliefs, have been willing to say and put upon record and make it law in the churches—if they are willing to say that we will have comity, and recognize the rights and the authorities of our sisters, and that no church will perform a marriage that will be a violation of the law of another church—I ask, if we can do that, cannot the representatives of these forty-two states at least send out to the country, as their conviction, that it ought not to be possible for a man and woman to go from New York or Pennsylvania, branded as a violator of the law, and get a citizenship in another state and find opportunity to violate the law of the sister state in another, and then return and claim citizenship in his original state? Can there not be at least that much of unity of conviction among the representatives of these states?

Mr. Chairman, thanking you for this personal honor, and trusting that under your good guidance this great Congress may be brought to great results, I now leave you.

The PRESIDENT: I have been asked to invite Bishop Gailor to address the convention; but I learn that he is a delegate to the convention, and his chance will come.

BISHOP DOANE: When his chance comes, he will be heard. I simply wish to thank you and the Congress for the great courtesy with which you have heard us. You have been very patient, and I wish to assure you of our most cordial sympathy and good wishes.

The PRESIDENT: It is wise to make the most of a good thing. I suggest that it would be well for some delegate in the Congress to

move that these gentlemen be requested to remain with us, and, as we Quakers say in Pennsylvania, if the spirit should move them, to say an occasional word of encouragement to us. Will some one make such a motion of invitation?

DR. FANNY LEAKE CUMMINGS, Washington: I make that motion.

AMASA M. EATON, Rhode Island: I second it.

The question being put upon the motion to invite the delegates of the Inter-Church Conference to remain and take part in the deliberations of the Congress, it was unanimously agreed to.

The PRESIDENT: We are now ready for the business of the Congress.

DR. FANNY LEAKE CUMMINGS, Washington: While these gentlemen are here, and all the things that have been said are fresh in our minds, I want to ask a question that suggested itself to me during the speech of Rev. Dr. Roberts. He was speaking of divorce and re-marriage from a biblical standpoint. I am sure all of us are deeply interested in this matter, and we would like if he would give us the Bible reference authorizing one of the parties to a scriptural divorce to re-marry.

REV. DR. ROBERTS: Is it in place, sir?

The PRESIDENT: It is entirely proper that you should answer, if you prefer.

REV. DR. ROBERTS: I answer that I shall be very glad to send to the delegate who has asked the question a full statement of the position of the Presbyterian Church in the United States of America on the subject. I will not take up the time of the Congress, but wish to say that the Congress may rest assured that a great church such as that with which I am connected, which takes as its fundamental law the Holy Scriptures, is prepared very fully to make clear its belief in the validity of the laws which it has adopted for the guidance of its own church members.

DR. FANNY LEAKE CUMMINGS, Washington: Can I ask just one more question?

The PRESIDENT: I think we have had a sufficient number of queries now. The reports of committees are next in order. And first in order is the report of the Committee on Credentials.

W. O. HART, Chairman, Louisiana: I have the honor to present the following report of the Committee on Credentials:

Washington, D. C., February 20, 1906.

To the Congress on Uniform Divorce Laws:

Your undersigned Committee on Credentials beg leave to report as follows:

They find that the printed list of delegates used as a temporary roll at the opening of the Congress on February 19, 1906, represents the duly accredited delegates to this Congress and those entitled to seats and votes therein with the additions hereinafter noted.

California.

Mr. Chas. L. Chandler, of Los Angeles, is to be added to the delegates from this State.

Minnesota.

Rev. A. J. D. Haupt, of St. Paul, is to be added to the delegates from this State.

North Carolina.

Mr. F. H. Busbee, of Raleigh, is to be added to the delegates from this State.

Texas.

Mr. W. L. Alexander, of Fort Worth, is to be added to the delegates from this State.

Your Committee recommend that each of the foregoing delegates be placed on the permanent roll of the Congress and recognized as entitled to seats and votes in all the deliberations thereof. Their credentials are made part of this report, as is also the printed list of delegates above referred to as the temporary roll, and it is recommended that same with the additions above noted be made the permanent roll of the Congress.

District of Columbia.

Mr. W. C. Clephane, is to be added to the delegates from this District in place of Mr. R. Ross Perry, declined.

New Mexico.

Your Committee is of the opinion that as there is some doubt whether the word "states" in the Act of the General Assembly of Pennsylvania calling this Congress embraces the territories of the United States, yet as Mr. F. T. Tobin has been duly accredited as a delegate from New Mexico, as per his credentials herewith returned,

he should be admitted and recognized as such, but without the right to vote.

Respectfully submitted,
W. O. HART,
Chairman.
M. H. BRENNAN,
WALTER S. COE,
JNO. L. WEBSTER,
JOHN P. McCOORTY,
Committee on Credentials.

I move that the report of the Committee be received, and that the recommendations therein contained be adopted as the sense of this Congress.

C. LA RUE MUNSON, Pennsylvania: I second the motion.

B. F. MEIGHEN, West Virginia: I rise for the purpose of amending that report, by authorizing the delegate from New Mexico to have the right to vote in this convention.

DR. FANNY. LEAKE CUMMINGS, Washington: I second the motion.

W. O. HART, Louisiana: On behalf of the Committee, I desire to say to the Congress that we gave this matter our most serious and careful attention. We all know that the word "states" has a well-defined meaning; and not only was the word "states" used in the act of the General Assembly of Pennsylvania which called this Congress into being, but it went further, and used the expression "states of this federal Union." It has never been contended that territories were states. So much is this so that the jurisdiction of the federal courts which is fixed by the Constitution of the United States in certain cases as to citizens of states, that the word "states" has uniformly been held not to apply to the territories.

There were other reasons presented to the committee why the Territory of New Mexico should not have its delegate recognized here, and very serious reasons. I do not think I violate the confidence of the committee when I state that one of these reasons was that the delegate appointed by New Mexico was not a resident or citizen of New Mexico, but of another state. The committee divided upon the question whether the delegate from New Mexico, or the gentleman who claimed to be a delegate from New Mexico, should not be rejected on that ground. But it was thought proper that, as the Governor of New Mexico had made this appointment—whether he was strictly authorized to make it or not perhaps ought not to be decided, particularly as he could not be communicated with in

time to get his views on the subject—that as he had made the appointment, and the delegate had presented his credentials, he should be admitted to the floor of this convention. But it was not thought proper, and I do not think that this Congress, upon reflection, will think it proper, that the Territory of New Mexico should be placed in a position to decide perhaps what this Congress is going to recommend. A majority of the states represented in this Congress will carry any question that may be brought before it; and if the Congress should be equally divided upon any question, we do not think the delegates from forty-one states of the Union are prepared to say that a delegate from New Mexico, with a doubt upon the validity of his appointment under the act of the General Assembly of Pennsylvania which brought this Congress into being, should have the right to decide the policy of the United States. I therefore trust, ladies and gentlemen of the Congress, that you will endorse the committee which has shown this courtesy to the Territory of New Mexico by recognizing its delegate, who is not probably entitled to recognition at all; but in that spirit of fairness which characterizes all of us, to give the delegate from New Mexico the right to be heard if he so desires, but not to allow a delegate appointed under such circumstances, and with a doubt upon the validity of his appointment under the act, place him in a position to decide the policy of this Congress. I trust therefore that the report of the committee will not be amended.

AMASA M. EATON, Rhode Island: After this very full and lucid explanation from the chairman of the Committee on Credentials, I hope that this Congresss will unhesitatingly sustain his report.

The SECRETARY: I would like to say just one word in explanation of the action of the Provisional Committee of Arrangements in not placing the name of this delegate upon the printed roll of delegates. When the credentials were presented to the chairman of the committee, the delegate being a resident of the city of Philadelphia, he was politely informed that to the best of the knowledge of the chairman of the committee, no invitation had been extended by the Governor of the Commonwealth of Pennsylvania to the Governor of the Territory of New Mexico, nor to the governor of any of the territories of the United States; but that if, perhaps, such an invitation had been extended by mistake, inquiry would be made of the Governor of the Commonwealth in order that the actual facts might be known. Such inquiry was made of the Governor of the Commonwealth of Pennsylvania by the chairman of the Provisional Committee, and he was informed by the Governor that no invitation had been extended to the Governor of New Mexico, nor to the governor

of any territory to send delegates to this Congress. Therefore, the Provisional Committee felt that it was not proper to place the name of this gentleman upon the accredited official roll of the Congress. He has told, however, that if he desired to present his credentials, they could be sent to the Committee of the Congress on Credentials. This is only in explanation of why his name has not been placed upon the official roll of the Congress.

A. R. DABNEY, California: I ask for information, whether or not upon this question we vote as individual delegates or by states?

The PRESIDENT: The vote is by the individual delegates.

B. F. MEIGHEN, West Virginia: I desire to say that the gentleman who is here as a delegate would like to be heard in his own behalf. It seems to me that this is extremely technical. We are adding delegates to the list who were not appointed from different states, and we are in council; and while I do not desire to take up the time of this convention to argue at length, I would regret to see a gentleman who is taking as much interest in this question as the delegate seems to be taking, excluded from participating and voting here when an important question might come up; and I hope it will be the pleasure of this convention to drop such technical views, and let the work go on.

W. O. HART, Louisiana: I desire to correct a statement made by the gentleman from West Virginia. In reference to the delegates which the committee has recommended to be put on the roll, their credentials were presented to the committee, and were all found in proper form.

AMASA M. EATON, Rhode Island: It is a painful thing to oppose such a motion, but I feel it my duty to say that the time of the convention should not be taken up with personal discussion by the gentleman on this question. He has already been heard fully before the committee.

W. O. HART, Louisiana: No; the committee did not hear him, but they passed on his credentials.

AMASA M. EATON, Rhode Island: Then I think he should be heard before that committee, and not before this body.

Calls for the question on the amendment.

The question being upon the amendment offered by the gentleman from West Virginia, 10 of the delegates voted aye, and 34 no; whereupon the Chair declared the amendment lost.

The PRESIDENT: The question now comes up on the original motion, which is to receive the report of the committee and adopt its recommendations.

AMASA M. EATON, Rhode Island: I do not wish to cut off any proper appeal or any proper opportunity from the delegate of New Mexico to be heard; and therefore I move an amendment to the effect that this matter be again referred to the Committee on Credentials in order that they may hear the applicant.

Duly seconded.

The question being on the amendment of the gentleman from Rhode Island, it was not agreed to.

The question being upon the reception of the report of the Committee on Credentials and the adoption of its recommendations, it was unanimously adopted.

The PRESIDENT: The report of the Committee on Procedure is now in order.

BENJAMIN NIELDS, Chairman, Delaware: The Committee on Procedure recommend that the Rules of Order adopted by the Convention yesterday be changed, as follows:

That Rule 1, which now reads, "The sessions of the convention shall begin at ten o'clock on each morning, and shall continue until one o'clock P. M., when an adjournment shall be had to 2.30 P. M. The afternoon session shall continue until 5.30 P. M., and no evening session shall be held, excepting by special order of the Congress," be changed to read as follows:

"1. The sessions of the convention shall begin at 11 o'clock on each morning, and shall continue until four o'clock P. M., and no evening session shall be held except by special order of the Congress."

The committee recommend that Rule 3, which now reads as follows:

"3. No delegate shall be entitled to speak longer than ten minutes on any subject, nor more often than once on the same subject, excepting by unanimous consent," be changed so as to read as follows:

"3. No delegate shall be entitled to speak longer than five minutes on any question, nor more often than once on the same question, excepting by unanimous consent."

That Rule 4, which now reads:

"Votes on all resolutions relating to the subject of divorce shall be taken by states, the Secretary calling the roll of the states in alphabetical order, and the chairman of each state delegation voting for his delegation; and no resolution on the subject of divorce shall be taken as expressing the sense of the Congress unless it shall re-

ceive the votes of the majority of the states represented in the Congress, including the District of Columbia as a state," be changed to read as follows:

"4. Votes on all resolutions relating to the subject of divorce shall be taken by states, the Secretary calling the roll of the states in alphabetical order, and the chairman of each state delegation announcing the vote of his delegates, and no resolution on the subject of divorce shall be taken as expressing the sense of the Congress unless it shall receive the affirmative votes of the majority of the states represented in the Congress, including the District of Columbia as a state."

That Rule 6, which now reads:

"All resolutions shall be read by the Secretary, unless in print and previously distributed, and referred without debate to the Committee on Resolutions," be changed to read as follows:

"6. All resolutions shall be read by the Secretary, unless in print and previously distributed, and each shall be referred without debate to its proper committee."

The SECRETARY: May I ask the chairman of the Committee on Procedure whether it took into account the fact that quite a number of the accredited delegates to this Congress are members of the national Senate and House of Representatives, who may come and be with us from ten o'clock until twelve o'clock in the forenoon, but who, after that time, would possibly be called away; and that to meet from eleven o'clock until four would give them only one hour of the whole day when their duties might not demand their attendance at the national Capitol.

JOHN C. RICHBERG, Illinois: It does strike me very forcibly that the amendments are not an improvement upon the original rules submitted.

The PRESIDENT: There is nothing yet before the Convention. A motion to adopt the report of the committee would be in order.

JUDGE WILLIAM M. LANNING, New Jersey: I move that the report of the Committee on Procedure be received, and that the recommendations be acted on separately.

Duly seconded and agreed to.

JUDGE WILLIAM M. LANNING, New Jersey: I now move that it be the sense of the conference that we do not concur in that part of the report of the committee which recommends a change of Rule 1.

Duly seconded, and agreed to.

AMASA M. EATON, Rhode Island: I move that the second recommendation, to change Rule 3 so as to read:

"No delegate shall be entitled to speak longer than five minutes on any subject, nor more often than once on the same subject, excepting by unanimous consent," be adopted.

JOHN C. RICHBERG, Illinois: I trust that this will not be adopted, for the simple reason that I think the convention will find itself in the position that that rule of five minutes will be transgressed upon too often. No delegate ought to be cut off before he has had an opportunity to say something, and ten minutes is certainly not a very long time.

VICE-CHANCELLOR JOHN R. EMERY, New Jersey: I think, Mr. President, that we will find that five minutes will not be sufficient to present either side of any one of the questions which will come up for discussion before this Convention. From the discussion in the Committee on Resolutions, there certainly are one or two resolutions upon which there will be prolonged discussions. One of them is a matter of great importance, and there was a division of sentiment upon it in the committee; and the importance of that subject has been added to by reason of the fact of the recommendations presented this morning by the American Bar Association through Mr. Stetson, adopting the view of those who were in the minority in the Committee on Resolutions. The vote there was very close, nine to six. The recommendation which the minority was in favor of is adopted in the recommendation presented by the American Bar Association. There was a motion yesterday proposed by one of the delegates that the Committee on Resolutions be increased to one from each state in order that every state might be heard. That proposition was not agreed to, and the only chance now for a representation of a state not represented on the Committee on Resolutions to be heard is on the floor of the convention. Such a representative is without the benefit of the discussion before the Committee on Resolutions, and for such a delegate to present the views which may affect his state within as short a period of minutes, it seems to me, is impossible. I do not think that the extension of time to ten minutes will be found to lead to any prolonged discussion. One, two, or certainly three presentations will put every lawyer in possession of the point in dispute, and I do not think there will be any difficulty if ten minutes be allowed to each speaker. But to say that the presentation of any resolution must be made in five minutes recalls what was a very good story that was floating around in Boston or Harvard, when I was a student there, about Rufus Choate's reply to a suggestion of Chief Justice Shaw, I think

it was, that there would be given him fifteen minutes to present the question which he desired. Choate said, "The question is so complicated that I would not undertake to present it in less than an hour; if the court gives me only fifteen minuates, I will request to be allowed an opportunity at some time when the court sits for the administration of justice and not for the dispatch of business."

I move to substitute the word "ten" for the word "five," and the words "pending question" for the word "subject" in the second line, and the word "question" for the word "subject" in the third line, so as to make the rule read:

"3. No delegate shall be entitled to speak longer than ten minutes on any pending question, nor more often than once on the same question, excepting by unanimous consent."

Duly seconded.

The question being upon the amendment proposed by the gentleman from New Jersey, it was agreed to.

BENJAMIN NIELDS, Chairman, Delaware: I move the adoption of the recommendation by the Committee on Procedure to change Rule 4.

Duly seconded, and the Secretary read the amended rule, as follows:

4. Votes on all resolutions relating to the subject of divorce shall be taken by states, the Secretary calling the roll of the states in alphabetical order, and the chairman of each state delegation announcing the vote of his delegates; and no resolution on the subject of divorce shall be taken as expressing the sense of the Congress unless it shall receive the affirmative votes of the majority of the states represented in the Congress, including the District of Columbia as a state.

The question being upon the adoption of this rule, it was agreed to.

AMASA M. EATON, Rhode Island: I move the adoption of the report of the Committee on Procedure amending Rule 6.

Duly seconded.

The Secretary read Rule 6, as proposed to be amended, as follows:

6. All resolutions shall be read by the Secretary, unless in print and previously distributed, and shall be referred without debate to its proper committee.

The question being upon the adoption of Rule 6 as amended, it was agreed to.

The SECRETARY: I would like to ask what disposition shall be made of briefs from delegates who are unable to be present at the meeting, but who sent letters addressed to the Secretary or to the

Congress. Shall they be sent to the Committee on Resolutions or sent to any other committee, or what disposition shall be made of them?

The PRESIDENT: If the letters be not too many and too long, they might be read to the Convention. I think it better, however, that they be referred, together with all other documents addressed to the Congress, to the Committee on Resolutions.

JOHN C. RICHBERG, Illinois: I rise to a question of information. I would like to be informed, as do also some of the other delegates, as to how many states are actually represented in this Congress.

The SECRETARY: There are forty states represented on the floor of this Convention, including the District of Columbia; the Governors of 42 states and the District of Columbia appointed delegates to this Convention. The States of Kansas and Montana are not represented.

VICE-CHANCELLOR EMERY, New Jersey: I move that the Secretary be requested to hand the letters and papers just referred to to the chairman, who shall be at liberty to dispose of them in whatever way he considers may be of value to the Convention.

Duly seconded and agreed to.

WALTER GEORGE SMITH, Chairman, Pennsylvania: The Committee on Resolutions begs leave to make the following report: Three matters were referred to the Committee on Resolutions yesterday; one was the resolution by the gentleman from West Virginia, as follows:

"Resolved, That the President of this Congress appoint a committee of five members of this Congress to consider the propriety of adopting a uniform Marriage License Law, and with power to report such a uniform Marriage License Law to be recommended for adoption."

As to this resolution, the committee reported that they see no objection to its adoption.

The second matter referred to the committee was the resolution offered by the gentleman from Connecticut, Mr. Russell, as follows:

"The jurisdiction of the courts of this state in suits for divorce shall be confined to the following classes of cases:

First, where both parties were domiciled within this state when the action was commenced.

Second, where one of the parties was domiciled within this state when the action was commenced, and the defendant was personally served with process within this state.

Third, where one of the parties was domiciled within this state

when the action was commenced, and one or the other of them actually resided within this state for one year next preceding the commencement of the action."

I am instructed by the Committee to say that they desire further time to report on that resolution.

The third matter referred to the committee were the suggested resolutions in the matter of divorce legislation prepared and put into print by the delegation from Pennsylvania, and which are in the hands of all the delegates to this Congress. The committee has made certain changes, and it reports the following:

REPORT OF THE COMMITTEE ON RESOLUTIONS.

I. As to Federal Legislation.

1. It is the sense of the Congress that no federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment,—a necessary prerequisite,—would be futile.

II. As to State Legislation.

1. Each state should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens.

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

3. Not less than two years residence should be required on the part of a plaintiff who has changed his or her state of domicile since the cause of divorce arose.

4. An innocent and injured party, husband or wife, seeking a divorce should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed at his or her option, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist.

5. The causes for divorce would seem to be susceptible of classification into certain groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases

should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be very greatly abated if legislation restricts the jurisdiction of the courts to the citizens of each state.

6. The following causes for divorces seem to be in accordance with American legislation; but the Congress does not at present recommend any attempt at uniform legislation as to causes:

a. Ante-Nuptial Causes.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Former marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

b. Post-Nuptial Causes for Divorce *a v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of felony.
4. Intolerable cruelty.
5. Willful desertion for two years.
6. Habitual drunkenness.

c. Post-Nuptial Causes for Divorce *a m.*

1. Adultery.
2. Intolerable cruelty.
3. Willful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

7. Conviction of crime should not be a cause unless such conviction has been followed by a continuous imprisonment for at least two years, and unless such conviction has been the result of trial in some one of the states of the Union, or in a federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

8. A decree should not be granted *a v. m.* for insanity arising after marriage.

9. Desertion should not be a cause for divorce unless persisted in for a period of at least two years.

10. A divorce should not be granted unless the defendant has been given full and fair opportunity by notice brought home to him to have his day in court, when his residence is known or can be ascertained.

11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

12. Hearings and trials should always be before the court, and not before any delegated representative of it, and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court to enter an appearance for the defendant and actively defend the cause.

13. A decree should not be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the respondent.

14. A final decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not be entered until the lapse of a reasonable time after a decree *nisi* after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

15. In no case should the children born during coverture be bastardized excepting where they are the off-spring of bigamous marriages, or the impossibility of access by the husband has been proved.

I move that the Congress receive the report of the Committee on Resolutions, and when it decides to consider the report on the resolutions, it take up the report section by section, and vote on each section separately.

Motion seconded.

F. H. BUSBEE, North Carolina: I would like to ask the chairman of the Committee on Resolutions if he could not now designate a time when the report would be taken up.

WALTER GEORGE SMITH, Chairman, Pennsylvania: In answer to the question from the gentleman from North Carolina, it is my hope that the report will be taken up at once; and in fairness to the gentleman who presented the resolution in regard to the Marriage License Law referred to this committee, and upon which it has made a report, I was apprehensive there might be some debate, which I did not wish to take precedence over the report on the resolutions. That subject was introduced first, and I guarded myself by making the motion that when the Congress takes up this report on the resolutions it consider the report section by section. I now move that we proceed to the consideration of these resolutions.

E. D. LEACH, West Virginia: I amend that motion by making the first part of the report, that in regard to the appointment of a committee of five to consider a uniform Marriage License Law, the order of business when we re-convene at 2.30 this afternoon.

The PRESIDENT: The Chair holds that the motion to amend is not relevant, but introduces a different topic which may come up later. It is entirely within the power of the Convention, should this resolution be adopted, to determine which part of the report it will first consider.

The question now comes up upon the motion of the chairman of the Committee on Resolutions, to take up the report of the committee on the subject of the resolutions section by section.

The question being as stated by the Chair, it was agreed to.

W. O. HART, Louisiana: I ask unanimous consent at this time to present and have action taken on the following resolution—that there be printed for the use of the Congress (1) the roll of the delegates present with the names of the chairman of each delegation; (2) the Rules of Procedure as adopted February 20, 1906, and (3) the report of the Committee on Resolutions on the resolutions reported by the delegation from Pennsylvania.

Duly seconded, and agreed to.

E. D. LEACH, West Virginia: I now move to make the order of business at 2.30 this afternoon the consideration of that part of the report of the Committee on Resolutions referring to the resolution concerning the appointment of a committee of five to draft a uniform Marriage License Law.

DEAN HUFFCUT, New York: I do not suppose there will be much debate about that. If the gentleman from West Virginia will permit me, I move that we now adopt the resolution which was reported back favorably this morning regarding the appointment of a committee of five members of this Congress to consider the propriery of adopting a uniform Marriage License Law.

Duly seconded, and agreed to.

AMASA M. EATON, Rhode Island: By courtesy of the chairman of the Committee on Resolutions, I wish to offer a resolution, and simply to move that it be referred to the Committee on Resolutions.

The PRESIDENT: The Secretary will read the resolution.

The Secretary read the resolution, as follows:

"Resolved, That the President of this Congress appoint a committee of five members of this Congress to consider the propriety of adopting a uniform Marriage Law, with power to report such a uniform Marriage Law to be recommended for adoption."

The PRESIDENT: That resolution will go to the Committee on Resolutions.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I now move that we proceed to the consideration of the first resolution reported by the Committee on Resolutions on the subject of divorce.

TALCOTT H. RUSSELL, Connecticut: I want to object to that at the present time, for the reason that I think many of the members of this Congress have not received a copy of these printed resolutions. I myself did not receive one until the present moment, within five minutes. When I came to the Secretary's office I was handed a document printed like that, "Suggested resolutions for divorce legislation," and below that was printed the wording "Amasa M. Eaton." It was printed in exactly this form, and that is all that I received.

It is impossible for me to intelligently consider this resolution immediately, when I have never had an opportunity to read them. I am sure that, as chairman of the Connecticut delegation, I am unprepared at present to proceed to the consideration of any of these resolutions, and not until I have at least a few hours to read them over. I think there is some mistake in the distribution of the suggested resolutions for divorce legislation, because here was this document exactly like those which contained an article by Mr. Eaton.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I have no doubt that the Pennsylvania delegation have as large a proportion of human infirmity and limitations as any delegate to this Congress; but I do know that our Secretary and his assistants have worked in season and out of season to illuminate the mind of every delegate, at his home before he came here, and by distributing, after they got here, the resolutions that were prepared on this subject. My friend has in his hand a printed copy of a resolution which was upon the platform here when this conference opened yesterday. As the gentleman from Connecticut says that it is unfair to him, because he has had no opportunity to read the resolutions—it may be that his engagements in Washington have been of such a character that he did not have the leisure to read the four lines that are printed on the first page—but he has had the opportunity; and that is all he can ask. Surely, I, as the representative for the time being of the gentlemen composing the Committee on Resolutions, have no desire, twelve minutes before our adjourning time, to press the consideration even of a resolution that seems so obvious to us as this first one. I am quite content to have the debate adjourned until this afternoon, or until to-morrow, or until whatever time the Congress desires. I move that we take into consideration now the first resolution reported by the committee.

The PRESIDENT: The gentleman from Connecticut, as I understand it, moves to postpone the consideration of the resolutions until the afternoon session.

TALCOTT H. RUSSELL, Connecticut: That is correct.

The motion of the gentleman from Connecticut was duly seconded, and agreed to.

Adjourned.

SECOND DAY

Afternoon Session.

February 20, 1906.

The Congress resumed its labors at 2.30 o'clock P. M., President Pennypacker in the chair.

EDWARD W. FROST, Wisconsin: Mr. President, I do not know whether it is in order, but I have been asked by my colleague, Judge Stevens, who is unfortunately not able to be present, to present a draft of an act concerning the appointment of a district attorney or other officer, to represent the state in undefended divorce cases; and in cases where apparent collusion is manifest. I see that our rules provide that resolutions shall be referred to the Committee on Resolutions. Therefore, I do not think that it is necessary to do more than ask that this be handed to the Secretary, without being read, for such action as the committee may take.

The PRESIDENT: The paper will be handed to the Secretary, and it will go to the Committee on Resolutions. The Secretary will be good enough to read the first resolution reported by the Committee on Resolutions.

The Secretary the read as follows:

I. As to Federal Legislation.

1. It is the sense of the Congress that no federal divorce law is feasible, and that all efforts to secure the passage of a constitutional amendment—a necessary prerequisite—would be futile.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of that resolution as having received the unanimous approval of the Committee on Resolutions.

Duly seconded.

The PRESIDENT: It has been moved and seconded that the resolution as read by the Secretary be adopted. A vote will be taken by states, the chairman of each delegation will announce the vote of the state as the name of the state is called.

WALTER GEORGE SMITH, Pennsylvania: If there be unanimous consent, I presume the vote could be taken otherwise. Unless there

is opposition it would seem unnecessary to call the roll by states, and I ask that the vote be taken viva voce.

The PRESIDENT: Is there any objection to that course being adopted?

ROBERT W. WILLIAMS, Florida: The only objection to that course is that it makes a precedent which may be used in some other case, and may lead to a great deal of trouble. I will object for that reason only.

The PRESIDENT: Objection being made, the roll of states will be called.

The Secretary thereupon proceeded to call the roll of the states, and when North Dakota was called, the following statement was made:

BISHOP JOHN SHANLEY, North Dakota: May I say a word in explanation? I am a Catholic official; and in order to put myself upon record with my co-religionists, I think it necessary that I should explain my presence here in this Congress. I am thoroughly in sympathy with everything that goes towards destroying the divorce evil in this land. As a Catholic I condemn it. I consider the most infamous thing that we have to contend with here is divorce *a vinculo matrimonii;* and consequently I am here. By my presence I do not approve of absolute divorce for any cause whatever. I believe that the same God who said "Thou shalt not steal," and "Thou shalt not kill," said "Thou shalt not commit adultery;" and "Whosoever shall put away his wife and marry another committeth adultery against her;" Mark, X, II. With this explanation I think that I have put myself squarely before all the members of this Congress, and I register North Dakota's vote on this proposition in the affirmative.

The roll-call being completed, the Secretary reported that 33 states voted aye, and none no.

The PRESIDENT: The Secretary reports 33 states have voted for the resolution, and none have voted against it. The resolution has been adopted. The first step in the pathway of progress has been taken.

WALTER GEORGE SMITH, Pennsylvania: I now desire to move the adoption of the next resolution.

Duly seconded.

The Secretary read the resolution, as follows:

II. As to State Legislation.

1. Each state should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens.

WALTER GEORGE SMITH, Pennsylvania: This resolution is likely to provoke debate. I know that from the proceedings in the committee. I will therefore reserve the privilege, with your permission, of not making any explanation until the attack has been made on the resolution.

VICE-CHANCELLOR EMERY, New Jersey: This is the resolution to which I referred this morning as one that involved some difference of opinion among the members of the committee, a division being made on it of I think 9 to 6 in its favor. I desire to move an amendment, which I will state after a while. The resolution reads:

"Each state should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens."

This resolution is presented, not as an act or statute to be followed, but as a declaration of the principles which should govern the formation of any statutes hereafter; and it derives its only importance from the fact that it extends or restricts the principles which should be applied by any statutes that may be drafted hereafter under the direction of the resolution. That being the case, I was not disposed, on the first reading of the resolution, to take it as you would a statute, and construe it strictly; and, therefore, on the resolution being read—"Each state should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens," I asked whether that was meant to restrict the remedies of divorce to cases of its own citizens, defendants as well as plaintiffs, or whether it meant that the remedies of divorce should be restricted only in favor of its own citizens; and the chairman of the Pennsylvania delegation, who had charge of the drawing of the report, said that it was intended by that resolution, if passed, to restrict the remedies afforded by divorce in favor of its own citizens, and not against them even for causes which arose within its own State.

I will give an illustration. Parties are married in New Jersey; for good cause the woman separates from her husband there for a cause which would justify separation and the establishing of a separate matrimonial domicile; and she would have to wait her two years for her divorce if she desired one, or did not trust to time to bring about a reconciliation. The man goes to Chicago; he establishes his residence there, a permanent domicile, as he has a right to do. Under the American doctrine that there may be a separation of the matrimonial domicile, that is not her domicile. While there, he commits the great matrimonial offense, referred to sometimes in these divorce cases as the New York offense; and the wife learns of it. She looks at the Illionis statutes, and they give a remedy if the defendant lives in Illinois, and is guilty of a crime against the laws of Illinois and against the matrimonial state; and, therefore, as the laws of Illinois stand now, and as the laws of most of the States

—certainly of many of them stand, she would have the right to go into Illinois, although she did not live there, she would have the right to go to the residence of the defendant, calling him to account by his own court; to prove his guilt by the witnesses produced in his own state; and they are all there; and both parties are in court.

Now it was urged before this committee that the State of Illinois should so change its divorce laws that it should not give a remedy against this defendant, unless the plaintiff came there to live. Now what is the practical situation? She must do one of two things—she must either go to Illinois to live, or try her case in New Jersey; for this resolution will give New Jersey the right to pass remedies for divorce in favor of its own citizen who is there. In New Jersey, a resident wife of New Jersey can sue an offending husband who commits this crime in Illinois. This law, as proposed, says you must; the residence of the defendant should not be taken into account, even if it is for the commission of a crime. Now what does she do? She says "I cannot move to Illinois; and if I did, it would be a fraud, for it would be for the purpose of getting a divorce and come back. I must do this,"—what? Try that case in New Jersey, bring the witnesses from Illinois to New Jersey, or else take their evidence on commission before a Master in Illinois. Now, that is for the reason that the committee declare the proper construction of this resolution is that every state is restricted to remedies in favor of its own citizens, and cannot make any provision for punishing a defendant resident therein, or for allowing a non-resident to come into that state against such an offender.

Now, take the other case; if the information on which the wife would bring her suit is wrong, and the husband contests it in New Jersey, there may be manufactured evidence; and if he could try the case in Illinois, he could prove that it was manufactured. But he has to go to New Jersey to defend. Why? Many, if not all of the Eastern States make the jurisdiction for divorce depend on the domicile of one or the other of the parties. This would require that it should have both domiciled within the same state.

Now, what reason is given for this? Apparently the necessity of the construction of some theory of divorce that could be logically worked out on the question of domicile, and to avoid contradictions on that subject. There can be such a system worked out. There is one in existence about which there cannot be any question of domicile. It is the English law, the hard law repudiated by the American courts—that the domicile of the husband, innocent or guilty, governs for the purpose of divorce. That is scientific; there is not any doubt about it; but the American courts have with almost unanimous consent repudiated the doctrine that the guilty husband can fasten the wife's domicile to him; and have said that, where a matri-

monial offense is committed, the wife has the right to have her own domicile; and the divided domicile is the result of the doctrine of the American courts, recognized by the Supreme Court of the United States in express terms—divided domicile.

Well, now, this is a question of doing practical justice; it is a question of doing right; and when we find, I say, many of the states—I do not know whether all or not—have the provision that the residence of either the plaintiff or the defendant is sufficient in the State where the defendant is sued, why should we not leave it alone. Why should he object to being called to account in the courts of his own jurisdiction, and why should the state give a preference in favor of excluding the resident defendant from its courts?

To show the general consensus of the opinion of the bar, I refer now to the act which was presented this morning by the gentlemen who represent the Inter-Church Conference.

"Section 3. No person shall be entitled to a divorce from any cause arising out of this state unless the complainant or defendant shall have resided within this state for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home."

That is all we want. If the defendant has resided in a state two years, and the plaintiff comes in, it is not a matter of jurisdiction. Is it not the very best jurisdiction? And so far from discouraging, why we ought to encourage trial in a jurisdiction where the offense occurred. This resolution, if passed, would exclude the right of any state to take jurisdiction in such a cause. This declaration of general principles will not undertake to say in what cases it shall be exercised on behalf of plaintiffs, and in what on behalf of defendants; but it says you may give remedies to a non-resident who shall come in and reside, but not to any non-resident against a resident defendant unless they do come in.

Now, the amendment that I propose to offer to this is two words only. I would make this read: "Each state should adopt legislation restricting the remedies authorized by its statutes of divorce to cases of its own citizens." I ask the Congress to bear this in mind. This is not one of the great questions that is before the Congress and the committee. It is rather a question as to whether in the administration of its affairs, there should be equality; it is whether this restriction is not too broad. Nothing is more difficult than to draw a recommendation; the committee has done its work admirably, but I think in this case they have overlooked the fact of the far-reaching effect of the resolution as expressed in its present form; and that if we had had before us the general recommendation of the American Bar Association we would perhaps have had an amendment put in. I therefore move that those two words be inserted.

FRANK H. KERR, Ohio: I second the amendment.

WALTER GEORGE SMITH, Pennsylvania: If no other delegate wishes to add to the arguments of my friend, the Vice-Chancellor, I will endeavor to explain the view of the Pennsylvania delegation.

MILTON G. URNER, Maryland: I understand that the chairman of the Committee on Resolutions desires the closing of this debate, and I have a substitute which I desire to read for the information of the Congress. I heartily agree with the Vice-Chancellor from New Jersey that the plaintiff ought to have the right to go to the home of the defendant, where the witnesses are, and if the plaintiff goes there and invokes the jurisdiction of that court, the defendant cannot say that the court is without jurisdiction; if the defendant is actually served with a writ, he cannot say that the court is without jurisdiction, and we will get rid of a great many of those fraudulent applications for divorce. Where the plaintiff moves off to acquire a residence simply for the purpose of filing a bill for divorce, the defendant gets no notice at all. The substitute I was going to submit is:

"All suits for divorce should be brought and prosecuted only in the state where either the plaintiff or the defendant has a *bona fide* residence."

The PRESIDENT: Is that substitution accepted by the gentleman from New Jersey.

VICE-CHANCELLOR EMERY, New Jersey: I believe it is the same in principle; but this resolution was drawn as a mere declaration; therefore, that is more of a matter of detail. For that reason I prefer to have it stand. Except for the suggestion that I make, the resolution is exactly in the right shape, and is the form that should come before the meeting from the committee.

SENECA N. TAYLOR, Missouri: I second the substitute. I do that because I think there would be a little ambiguity. If we made the amendment as the Vice-Chancellor from New Jersey suggests, it would be:

"Each state should adopt legislation restricting the remedies afforded by its statutes of divorces to cases of its own citizens."

There an ambiguity exists, whether the wife from New Jersey could come in and take advantage of the jurisdiction. With the substitute there can be no doubt at all. The jurisdiction of the court must be there where one of the parties has a bona fide residence; and other parts of these resolutions extend the time in which that residence must have existed. I therefore favor the substitute.

ALDIS B. BROWNE, District of Columbia: Being a District of Columbia man, I favor that language which is used in federal jurisdiction. The language of the substitute presented by the delegate from Maryland is, I think, word for word the language of the judiciary act under the federal law in defining the jurisdiction of courts with respect to citizenship of plaintiff or defendant. It is perfectly clear. The argument of the delegate from New Jersey is as sound as a nut; that ought to be the law; and if you make that resolution in the form suggested by the delegate from Maryland, you have it in the form that the bar throughout the United States in federal practice would thoroughly understand.

RALPH W. BRECKENRIDGE, Nebraska: The discussion upon this resolution in the Committee on Resolutions took a little different form from that taken here. The suggestion of the Vice-Chancellor from New Jersey with respect to the amendment of this resolution was to insert after the word "to" in the second line of the original resolution the words "or against," so that it should read "to or against its citizens." He now changes it so as to make it cover cases of its own citizens. Now, ladies and gentlemen, with respect to that, and with respect to the substitute, I want to offer this single suggestion—that, in my judgment, either one of these substitutes would open the door wide both to collusion and to migratory divorces; and that is one of the evils which this Congress intends to do away with. I see the gentleman shake his head; but, nevertheless, where I reside, in the State of Nebraska, in the Dakotas, and in other near-by states, it is an absolute necessity in order to prevent the citizens of New Jersey, for instance, from coming out there and getting their divorces in Nebraska, South Dakota and North Dakota. There should be some statutory regulation which will require them to live in the states where they seek their divorces; and not permit them to follow up the offending party and sue him in a state where they may be able to find him, even though he may have established a residence in such other state. I think any action of this Congress which does not confine the right to sue for divorce to the state where the plaintiff resides and has a *bona fide* residence, is a mistake.

F. L. SIDDONS, District of Columbia: What my friend from Nebraska has said, I think, unintentionally of course, rather misstates the position of the Vice-Chancellor. He illustrates his objection to the position of the Vice-Chancellor by saying that under the amendment which the Vice-Chancellor proposes, the citizens of New Jersey may go to Nebraska or the Dakotas and there sue, but he did not say—what is meant by the Vice-Chancellor's position—that such citizens of New Jersey can go there and sue citizens of Nebraska or Dakota. We do not propose that citizens of New Jer-

sey may go to Dakota, and bring suit there against non-residents of Dakota—nothing of the kind. We simply say the plaintiff should be given an opportunity of going to the state of the defendant's actual *bona fide* residence, and perhaps where the cause of divorce arose, and there be permitted to bring a suit for divorce. The illustration, I think, is an answer to my friend from Nebraska.

CHARLES F. LIBBY, Maine: As one of those who favored the amendment in the committee, I only wish to add a word. The declaration of principles is drawn, as it seems to us, to exclude a very important class of cases; and that is where the applicant for divorce goes to the jurisdiction and residence of the defendant. One of the great evils in divorce cases has been these uncontested divorces. Anything which facilitates bringing a suit for divorce, which may involve a series of facts, in the residence of the defendant will minimize we think some of the evils of the present divorce practice. Moreover, this principle is recognized by the Supreme Court of the United States, which holds that a divorce obtained in the domicile of either party is valid; and believing that it is not only in the interest of justice but the proper administration of the law, and facilitates a thorough examination of cases where the defense is involved, but also that it will minimize, or tend to do so, some of the evils of the present administration of the law, those of us who favored the amendment did so.

F. H. BUSBEE, North Carolina: The case cited by my friend from Nebraska as a probable evil to be met by the adoption of this amendment, to wit: that a collusive citizenship should be obtained by the defendant living in the state long enough to get a citizenship merely to enable the plaintiff to bring a collusive suit—that it seems to me is a hypothetical objection. We all know the thousands of instances in which the plaintiff obtains a collusive citizenship for the purpose of bringing a suit; but I apprehend that the suggestion which he makes of the danger of collusion is merely hypothetical. It behooves the Congress throughout the whole discussion to avoid the danger of collusion as much as the danger of false citizenship. I never heard or imagined a case in which the defendant would seek to obtain a citizenship in another state merely for the purpose of enabling a plaintiff to bring a collusive suit by a service upon him. Now, has there been such an instance in the experience of my friend?

There was an amendment suggested, I think, by the gentleman from Connecticut, in which the question of citizenship was waived, was not insisted upon if service was made in the state. That, if it came before the Congress, I proposed to oppose, because that would give opportunity for collusion; but when this amendment provides that it shall be only upon a defendant who is a citizen of the state,

it invokes a trial in the very tribunal where the witnesses live, where the defendant lives; and is an act of courage on the part of the plaintiff not usual, if there be collusion, if the suit is brought merely for the purpose of being separated,—that would be the last tribunal that she would seek. I regret that there should be an appearance of conflict between the gentleman from New Jersey and the gentleman from Maryland. I apprehend that the Maryland suggestion comes nearer filling the desideratum, in this vicinity at least; and between those two amendments, I shall support those who believe in the principles suggested by the gentleman from Maryland.

VICE-CHANCELLOR EMERY, New Jersey: I did not have the opportunity to read this. This reaches just the end I intended, if it is adopted. It would be a declaration in the line of the principles I should like to see prevail:

"All suits for divorce should be brought and prosecuted only in the state where either the defendant or the plaintiff has a *bona fide* residence."

I will accept that amendment.

MILTON G. URNER, Maryland: I understand the gentleman from New Jersey accepts my substitute in lieu of the original resolution, as follows:

"All suits for divorce should be brought and prosecuted only in the state where either the plaintiff or defendant has a *bona fide* residence."

The PRESIDENT: There was an amendment offered by the gentleman from New Jersey. The delegate from Maryland proposes a substitute. The question now comes up upon the substitute presented by the gentleman from Maryland.

WALTER GEORGE SMITH, Pennsylvania: If I am in order, Mr. President, my only reason for not accepting this is the earnest desire to comply with the rules on my own part, and as far as I can by persuading the other members to abide by the rules; because there is sure to be a great contrariety of views here; and we must try to observe the rules in order to get over the vast ground we have to cover. I would like to say at the outset that the Pennsylvania delegation does not claim to be made up of a body of expert divorce lawyers. We have given such study to the question as we could since our appointment, and we have presented the result of our study. If there be found any trace of pride of opinion in our work, I beg that the Congress will not consider that it is indicative of any feeling in our minds or in our hearts. What we want to do is to unite with you in adopting such measures as are possible to meet what we all conceive

to be an evil, or we would not be here—and that is the prevalence of divorce in the United States. With that preliminary remark, let me explain what was in our minds when we drew this suggestion as it stands. It is elaborated in the note; but the note is in fine print, and is no part of the committee's work; and perhaps it would be as well for me to read the note—I mean as much of it as bears upon this special subject now before us.

"It is obvious that a very large proportion of the evils under existing legislation of the different states arises from the fact that the general proposition that the laws of divorce are properly made only for the protection of those persons whose domicile is in the state where relief is sought at the time cause of the divorce arose has been overlooked; and if each state would deny its courts jurisdiction in divorce to any applicant excepting one who was a citizen at such time, the anomalies now existing would be removed. Since the matrimonial relation is considered as being properly a matter of the highest moment to the State, and the preliminary contract must be executed in accordance with the laws of each state in order to be legal, it is obvious that any proceedings for dissolution of the status of marriage must find their sanction in the legislation of that state. And it has been settled by a long line of decisions that any attempt of one state to extend its jurisdiction over the status of marriage between citizens of another state is void, beyond the confines of the state in which proceedings are taken. All of the evils arising from migratory divorces will be met and removed by a strict adherence to this rule; and the extraordinary anomaly and injustice so often presented of persons who have been freed from the bonds of matrimony in one state being still held as married in other states will no longer exist."

The Vice-Chancellor, in his very cogent address to you has reminded you of what all lawyers know, that the husband and wife, until cause of divorce arises, no matter where they may physically be, have but one domicile; and that is the domicile of the husband. It is only by the adoption of what our friend calls the American rule in favor of the wife, that when an offense against the matrimonial state has occurred of so serious a character as to be ground of divorce, that then in favor of the wife she is allowed to act as a feme sole, so far as jurisdiction of the court is concerned.

This whole argument must be concentrated upon this consideration: The amendment of our friend, the Vice Chancellor, would give a woman, separated from her husband at the time of the offense by that husband, the right to go to the place where the husband lived, and where perhaps the offense was committed, and bring suit against him there. Of course she could do that without any declaration of this sort, because it is her domicile; that is where her husband lives.

On the other hand, the wife, we will say, lives in the State of Kansas, and the husband in the State of New York; the wife commits an offense in Kansas that, under the laws of Kansas, is a cause for divorce in that State. It is not a cause in New York. The husband then can leave New York, and he can go to Kansas, and can avail himself of the jurisdiction of the courts in Kansas, and he can bring suit at once without any preliminary requirement of residence whatsoever, and he can get a decree against his wife there. That was her actual residence, it is true; but she was the guilty party, and therefore the reason for giving her a separate domicile fails.

Now, I think if legislation can be adopted by all of the states, that would restrict either party to the remedial statutes of only one of the states, it would not be such a terrible matter, if the causes of divorce in those states were substantially similar. It would be necessary to eliminate New York and South Carolina. On examination of the tabulated causes of divorce in all the states, you will find, when the debate comes upon the subsequent resolution here, they are very largely the same. Where is the hardship in restricting the jurisdiction to one court? There is no inalienable right to anything but one day in any one court; and we are bound to assume that courts of one state are equally wise and equally upright with the courts of any other state, however the facts may be. The thought, it seems to me, that is in the minds of the gentlemen advocating this amendment, unconsciously to themselves, is the natural thought that comes into the mind of a lawyer, that the great object is to afford the protection of the laws as freely and easily, as it is possible to do it, to all citizens. And there is back of that thought also what I think should be a source of pride to us as Americans—a feeling of chivalry towards the other sex, the weaker sex—a desire to give them equal opportunity, and as great opportunity as possible; and I believe, as a certain writer whom I have lately read thinks too, it has been a perversion of that thought that has made the divorce laws as liberal as they are.

I may not have grasped entirely the meaning of the Vice-Chancellor; but it seems to me it is this: these two parties to the divorce proceedings, the guilty and the innocent one, stand upon the same plane, and the plane is no different from the parties to any other suit. A husband lives in Illinois, and commits an offense. It is supposed that if the wife, being separated from her husband, lives in New Jersey at that time, she could by this amendment go out to Illinois as she could not, as the language of the resolution stands now, and bring a suit for divorce against him. I say she could. I say, however, that that husband could not come to New Jersey under this language, and bring his suit against the wife in New Jersey; and I say it is no hardship that he cannot do it, though I

admit he would have difficulty in getting his witnesses; I admit that the proceedings would be more expensive; I admit it would be far more difficult for him to obtain his divorce. I am perfectly willing to accept those difficulties. With that explanation, I leave the matter to the Congress.

VICE CHANCELLOR EMERY, New Jersey: The language of the Illinois statute is, "The plaintiff must have resided in this state one year next before the filing of the bill, unless the offense complained of was committed in this state, or while one or both parties resided here."

W. O. HART, Louisiana: I would like to ask the chairman of the committee a question—What is the idea in using the word "citizen?" "Citizen" has a well defined meaning. It might exclude a foreigner.

WALTER GEORGE SMITH, Pennsylvania: That is what I mean exactly.

W. O. HART, Louisiana: It might exclude a foreigner who might have been here twenty years.

WALTER GEORGE SMITH, Pennsylvania: Yes.

W. O. HART, Louisiana: Is that the intention?

WALTER GEORGE SMITH, Pennsylvania: Yes; he ought to become naturalized.

VICE-CHANCELLOR EMERY, New Jersey: I have a suggestion: supposing "resident" and "inhabitant," and like terms in divorce suits, are construed as meaning domicile? There is no other construction or word used to indicate the extent of residence.

WALTER GEORGE SMITH, Pennsylvania: I spoke too hastily. The Vice-Chancellor is right; "citizen" would be interpreted as meaning "resident."

DEAN HUFFCUT, New York: I suggest the word "has" be changed to "had."

The PRESIDENT: There being no objection, the change may be made. Are you ready for the question on the substitution of the gentleman from Maryland as corrected? The Secretary will read the amendment.

The Secretary read as follows:

"All suits for divorce should be brought and prosecuted only in the state where the plaintiff or the defendant had a *bona fide* residence.

JOHN C. RICHBERG, Illinois: I understand the substitution by the gentleman from Maryland has been accepted by the gentleman from New Jersey, so that the substitute being carried the amendment would be carried.

VICE-CHANCELLORY EMERY, New Jersey: Yes.

The Secretary then called the roll of the states, whereupon 27 states voted aye, and 6 no; and the President declared the substitution adopted.

The PRESIDENT: Are you ready for the question on the resolution as amended?

DEAN HUFFCUT, New York: These resolutions have been drafted upon the theory which with the first resolution starts; namely, that jurisdiction should be taken only in the State of the plaintiff, and the succeeding resolutions undertake to remedy and define the considerations under which jurisdiction should be taken in the state of the party plaintiff, but contain nothing concerning the conditions and circumstances under which jurisdiction should be taken in the state of the party defendant; and it seems to me that such a provision or limitation might properly be made part of the first resolution. I therefore offer the following amendment to the now pending resolution:

"But jurisdiction in the state of the defendant should be taken only in case that state was the last matrimonial domicile of the parties, or in case the offense was committed in that state."

It seems to me that the whole theory of the amendment was based upon the motion that it was highly convenient and just that the plaintiff should be permitted to go into the state in which the defendant lived, and in which he commits his offense, but no such limitation appears anywhere in the resolution; and I therefore suggest that these two limitations would be proper limitations on the part of the defendant as the limitations that appear in No. 2 and No. 3, are proper limitations in case of the party plaintiff, and I offer that as an amendment to the now pending amendment.

Motion seconded by Bishop Shanley of North Dakota.

The Secretary read the amendment.

CHARLES F. LIBBY, Maine: I do not think that represents the views of those who favored this amendment in committee. That restricts the right of a plaintiff to seek out a defendant in his own jurisdiction. Now, it is not our purpose to limit the right of a plaintiff to go where the defendant is to be found, and charge him to his face with the offence which is claimed to be a cause of divorce, and try it out in that court. This confines the choice of jurisdiction, first, as I understand it, to the last matrimonial domicile. It may be that

neither of the parties are residents of that domicile. The wife has the privilege of seeking a new domicile, after cause of divorce has arisen. Then it prohibits the plaintiff going into the state where the defendant has a *bona fide* residence, unless the offence was committed there. Now, what I desire is that we shall favor as much as possible, by the form of the law that we may adopt, the influencing of a plaintiff to seek out the defendant as a choice of jurisdiction for a trial of a divorce suit; and, believing that this does not accomplish the purpose of the amendment, that it restricts the object some of us have in view, I am opposed to it.

RALPH W. BRECKENRIDGE, Nebraska: I agree with the gentleman from Maine that this amendment does not pursue the thought of the amendment which has been adopted. Personally, it seems to me now that from my standpoint there is no reason why, having opened the doors wide, we should now close them again. Several of the sections of the country where I live allow jurisdiction of the defendant, wherever he may be found; and I do not see why we should not apply that here now, and let the jurisdiction be acquired by either of the parties over the defendant wherever he may be found. That is substantially what the amendment proposes to do.

VICE-CHANCELLOR EMERY, New Jersey: I think that, having declared ourselves upon the general principle that the jurisdiction goes either in the domicile of the plaintiff or the defendant, we should not undertake to spend the time to limit the particulars and the occasions in which the state, when it comes to make its legislation, or this committee, attempt to carry that out in detail. The one question we are contending against is the restriction to the single domicile of the plaintiff; and by the overwhelming judgment of the states represented in the Congress we have said that the jurisdiction should be the bona fide residence of either. Now leave it there; do not attempt to cut it down by the insertion of words now, that you may not understand the meaning of when you come to apply them.

RALPH W. BRECKENRIDGE, Nebraska: Then why extend them?

VICE-CHANCELLOR EMERY, New Jersey: I am not clear about that myself. But we are not now drawing statutes; we are declaring principles, and the second principle we have declared is that there should be two domiciles; and we do not want to go to work and say whether this domicile will do or that domicile will do; for we are all lawyers, or have been, and we know that matter will take up more than a week to begin with. We had better let it rest where it is, that the domicile of either is the principle of statutory control.

The Secretary then called the roll of the states to vote on the amendment, whereupon two states voted aye, and 31 states no; and the President declared the amendment lost.

The Secretary then called the roll of states to vote on the adoption of the resolution, as follows:

"1. All suits for divorce should be brought and prosecuted only in the state where the plaintiff or the defendant had a *bona fide* residence;" and when New York was reached, Walter S. Logan, chairman of that delegation, said:

New York votes no; we do not feel justified in voting for the resolution unqualifiedly.

The roll call being completed, the Secretary reported that 31 states voted aye, and 1 no; whereupon the President declared resolution 1 adopted.

The PRESIDENT: The Secretary will now read the second resolution.

The Secretary read as follows:

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of that resolution.

Motion seconded by Charles F. Libby, of Maine.

The question being called for, and no delegate rising to speak to the amendment, the Secretary proceeded to call the roll of the states thereon, when the delegate from Michigan addressed the Chair as follows:

REV. CAROLINE BARTLETT CRANE, Michigan: We have on the next page a list of causes for divorce which are said to be in accordance with American legislation. If those causes are sufficient causes it is a matter of injustice that any man or woman, who is unable to gain a divorce for good and sufficient cause in his or her state, should be without remedy in any state. Take, for example, the State of New York, which gives divorce for one cause only, and South Carolina, which declines to give divorce for any reason.

The PRESIDENT: I regret to say we cannot interrupt the vote for the purpose of argument. The opportunity for argument arises before the question is called.

F. H. BUSBEE, North Carolina: I move that, by unanimous con-

sent, the delegate be allowed to speak. She was not aware of the fact that the question was called.

Motion seconded and agreed to.

REV. CAROLINE BARTLETT CRANE, Michigan: Now, if we had a practical uniformity in all states upon the subject of causes of divorce, I think this would be a seasonable resolution to pass; but, inasmuch as we have at least two states which are so widely divergent in their laws from the majority of the states, and inasmuch as they are so divergent in their causes from the list of causes which is here stated, it would seem to me to work a very great injustice to applicants for divorce if they have no recourse anywhere in the United States. It certainly seems to me it would be a matter of legal form, and not a thing which goes to the root of the question. Although this Congress is made up so largely of lawyers, the only thing we wish to arrive at is right principles which shall govern the case. Then the legal profession will put those principles into a code. It would certainly be wrong not to consider the great injustice which would arise in denying an innocent man or woman recourse to divorce anywhere in the United States, because the law of that particular state grants divorces not at all, or for but one cause. This is something I feel I ought to call attention to. I am seriously and very earnestly opposed to the passage of this resolution.

I ask for others the privilege I enjoyed myself. I ask the unanimous consent of this house that there shall be debate upon this subject.

DEAN STERLING, South Dakota: I appreciate the position taken by the lady who has just spoken, and it seems to me that—

The PRESIDENT: I cannot entertain the argument of the gentleman. He is interrupting the calling of the roll of the states, and we cannot get into any discussion.

The roll-call being completed the Secretary reported that 27 states had voted aye, and 4 no; whereupon the President declared resolution 2 adopted.

JUDGE ALFRED WOLCOTT, Michigan: I wish to move a reconsideration of this vote. Our State voted aye, but we wish to reconsider it, as it seems to us this matter is one of as much importance as any that has taken up the time of the Congress thus far.

DR. FANNY LEAKE CUMMINGS, Washington: I second the motion.

J. G. HAMILTON, North Dakota: I move to lay the motion to reconsider upon the table.

Duly seconded.

The question being upon the motion to table the motion to reconsider the vote upon resolution 2, and a division being called for, there were 27 ayes and 29 noes; whereupon the Chair declared the motion lost.

The PRESIDENT: The motion to reconsider the vote on resolution 2 is now before the House.

C. LA RUE MUNSON, Pennsylvania: The delegation from Pennsylvania desire to have this question fully argued. It strikes at the root of the whole matter. How this Congress will vote in the end is most clear and certain, but as this is a most important subject we have before us, one of the most important subjects in the interest of checking the divorce evil, it should have a full and free expression, I therefore strongly advocate this motion to reconsider, and shall vote for it.

VICE-CHANCELLOR EMERY, New Jersey: I join in the opinion of the gentleman from Pennsylvania. I think, as was said in the resolutions prepared by the Pennsylvania Committee, this is an effort to strike at, what has not only been called here but elsewhere, the root of the evil. It is a question upon which the fullest discussion certainly should be accorded to those who have views against the resolution. I think it was a case where the debate was properly closed by the chairman; but under a misapprehension of those who sit in this part of the hall the time had not yet arrived for discussion. I hope we shall vote for the reconsideration.

The question being called for upon the motion to reconsider, it was agreed to.

The PRESIDENT: The question now comes up upon Resolution 2. Are you ready for the question?

CHARLES F. LIBBY, Maine: It seems to me there must be some misapprehension as to what the real purpose of this resolution is. I take it that we are all interested in formulating some legislation, which will have a tendency to check what is known as the divorce evil. Those of us who are attempting to do this think we are accomplishing a great deal towards that end in having adopted this resolution. The great evil to-day, so far as divorce is concerned, is what is called migratory divorce. This resolution is aimed at cutting up migratory divorces. The Conference of Commissioners on Uniform Laws have struggled with phases of the divorce question two annual sessions, and finally agreed upon two bills; and the most important feature of one of those two bills was this very provision that a plaintiff cannot go into another state than that of her own domicile, and secure a divorce for a cause which was not the cause of divorce

when it occurred in the place of her residence. That is what people are moving for from one state to another—to find easy causes for divorce; and to get to such a distance from the defendant in the cause that he is not likely to turn up and defend. Now, if we can do something by a bill which shall limit the right of these people to move from state to state to secure an easy divorce, we have done a good deal in the direction of limiting the evils which are now a curse to the land. And I think that if you realize what this Resolution, when put in the form of legislation, will accomplish, you will see that it is one of the most powerful instruments that has been suggested in all these resolutions. Now, that is the way it seems to those of us who have favored this resolution, and I should be very glad to know why it will not accomplish that result.

E. D. LEACH, West Virginia: In reply to the gentleman from Maine, I wish to say I have been asked personally by a number of the lady delegates to say what I am about to say. Further than that I hold proxies from about four hundred physicians of the United States; and I have a few things I would like to say in connection with this question.

In the first place, the idea of migratory divorces is entirely exaggerated; entirely so. Mr. Carroll D. Wright, in the figures that he formulated in his investigation from 1867 to 1888, or 1886, came to the conclusion that ten per cent. of the divorces granted in the United States were of this character; that out of 231,000 divorce cases, in about ten per cent. there was migration in order to secure the divorce. The conditions have changed somewhat since 1887; and only last fall, Professor George Elliott Howard, in that monumental work of his on the History of Matrimonial Institutions, came to the conclusion, after most careful research, that only two per cent. since the investigation of Wright were granted when there was actual removal from one state to another to secure ground for divorce.

I want to ask the gentlemen of this Congress, in all fairness to humanity, to think of the unnatural conditions which must exist when the parties find it impossible to live together, if they have no right to go to some other state for relief. I think I voice the sentiment of the lady from Michigan when I say that in discussing this question we have gone far away from the original standard; and we have to go back and start at the beginning. A great many people speak of the divorce evil; but I have heard very little said about the marriage evil. Until we can regulate the thing from that standpoint, we never can stop divorce. Our President, in his opening address, called attention to the fact that we had a stream now become a flood that we wanted to stop. I want to ask if the proper way

to stop a flood in the Ohio would be to build a dam at Pittsburg. I think we would have to go up to Potter County and break the water flow.

I want to say this: When I was selected as a Delegate to this Congress, not knowing or expecting that there would be any physician here, or only a few, I prepared a circular letter which I sent out to several hundred physicians. They were addressed, some to the leading physicians of the United States, professors in medical institutions, authors of medical works, and then to a larger number of general practitioners whom I did not know either by reputation or personally. I asked four questions, and those may be of some interest and possibly of instruction to you. My first inquiry was:

"What are the principal primary causes for divorce? Court records show adultery, desertion, etc. But why these? Are they not the results of unnatural marital conditions?"

I received in reply to these letters a far larger percentage than I expected. Nearly fifty per cent. of the inquiries were replied to. I have the letters which I can show to the delegates, and will do it personally, although they were personal letters from some of the leading physicians throughout the United States. Eighty-nine per cent. of those answers said that the statutory grounds were not the real causes for divorce. The physicians know about it before the lawyer does; they can prophesy when the divorces are coming. They know long before the minister does. Eleven per cent. made reply to that question that they did not know, as their practice was on some special line, which did not bring them in contact with people in general.

My second inquiry was:

"To what extent do sexual anesthesia, sexual perversion, dread of child-bearing, impotency, and venereal diseases enter into the formation of a legal ground for divorce where they are not statutory grounds?"

Perhaps that may have been misunderstood to some extent. I really expected so. I formulated the answers the best I could. Seventy-five per cent. say they are primary grounds for divorce in very many cases; nineteen per cent. thought not, they did not know; six per cent. said they thought they had very little to do with it, and then named some other grounds.

My third inquiry was:

"Would education in sexual matters overcome the evils of improper marriages?"

Ninety-seven per cent. said they would; nineteen per cent., however, qualified their answers in certain minor details; three per cent. that education would have very little effect. Let me say that almost every answer that was made said that the causes for divorce were

improper marriages, or improper marital conditions after the marriage had been entered into; and that the mere statutory grounds which we claim are adultery, desertion—whatever they may be in the respective states—are only just simply the method whereby parties separate, and not the grounds. As a lawyer, I have not had as much experience as some of you other gentlemen who are older, but I cannot name a single case, except one, where the actual ground for divorce, to my knowledge, was the ground upon which the court granted the decree, and that is a penitentiary sentence. But I will say this—in almost every instance there were primary causes, psychopathical, pathological conditions, that made it absolutely impossible for the parties to live together; and thereupon they had to go ahead in some way, commit an offence against the laws of the state in order to get evidence to secure the divorce.

My fourth inquiry was:

"Would you recommend physical and mental qualifications as requisites to marriage, and the existence of pathological and psychopathical states, such as accompany or create abnormal sexual conditions, as grounds for divorce? Adjusting the laws so a victim of such circumstances may obtain a divorce without being obliged to commit a crime—a matrimonial offense—as is now frequently done?"

Eighty-six per cent. recommended physical and mental qualifications as requisites to marriage; fourteen per cent. did not answer this question. Ninety-two per cent. recommended that the existence of pathological and psychopathical states, such as accompany or create abnormal sexual conditions, be made grounds for divorce. Six per cent. did not so recommend. Two per cent. did not answer this question.

Now, gentlemen, that appears to me to be pretty conclusive evidence from physicians' standard that we lawyers, in formulating the divorce laws, get ourselves away from the ground of trouble. I think that if we can take these matters into consideration a little bit more; if we can allow a little bit more relief when these conditions do exist, we would do well. It does not make any difference how high you make the ground for divorce, people are going to meet it, if they cannot live together by the laws of nature. You cannot suspend those laws by any Act of Legislature; and until we come in this country to understand that the main duty, the chief purpose and end of an organization of this kind is to increase the sum total of human happiness in the country, I think we are searching after false gods. If we can do so by increasing the standard of divorce, well and good; if we cannot, better lower it.

SENECA N. TAYLOR, Missouri: I came here impressed with the primary idea that what we ought to do was to stay the flood-gates of divorce; not open them wider. I came here with the idea that one of

the most disgusting things that exists in our states is that a person may go from one domicile to another, and there obtain a divorce. If it were not that, if that was not the primary idea in my mind—that I might do something to help that glorious consummation of staying this flood of divorce, I would not have come here at all; and I am satisfied that it is the sentiment of a great majority of the delegates on this floor. I greatly respect and highly esteem the vigorous speech of the delegate from Michigan, but I must say that I think she is mistaken in regard to the idea which she entertains on this subject. In every civilized community there is to be some giving up on the part of the citizen, or else we can have no civilization at all. And if there is anything that is a blot on our civilization to-day it is the flood of divorce that is going on. Take a party who is apparently wealthy; neither party has committed any offence at all; none whatever. He may go to some state in the Union when his state would not permit a divorce; and there he may set up his, or she may set up her plea for divorce, and get it. It is a thing that everybody, every right thinking person, it seems to me, condemns to-day. And if we are going to shut down the flood gates, we have to deal, not with psychological questions, we are to deal with practical questions, and say, "Thus far and no further shalt thou go in matters of this kind." And I stand for this resolution as it is written.

DEAN STERLING, South Dakota: It seems to me that the question here is one of injustice and the question is as to what injustice should constitute causes for divorce. The Committee, Mr. President, have submitted certain causes here, namely, adultery, bigamy, conviction of felony, intolerable cruelty, willful desertion for two years, and habitual drunkenness, as causes for divorce. Not that they would particularly recommend them for the several legislatures to adopt, but I take it as appealing to the minds of the members of this Committee, as being reasonable and just grounds for divorce; and, Mr. President, they appeal to me as being just and reasonable grounds for divorce, each and every one of them as enumerated here. Several states already name these as grounds for divorce. This being so, the question recurs to us now, whether or not, if these be just grounds for divorce, we fear to do justice, because we are afraid of doing some wrong. Must the one against whom some of these grievances have been committed elsewhere, on coming to this state or that state, and making a *bona fide* residence and citizenship in that state, be dependent on her or his cause for divorce in that state in which he is now a *bona fide* resident and citizen because it was cause for divorce in the state from which the party came? In the State of New York, or in any other state, perhaps, only two of

the most grievous causes of divorce exist. I do not believe, Mr. President, that we should go that far; but we should say that if there is one of these reasonable grounds for divorce given by the statute of any state, that a party coming to that state and making his residence and citizenship as elsewhere contemplated in this report, he should have the right to maintain an action for divorce within that state, because these are reasonable grounds.

Now, we talk about the question of this being an encouragement to migratory divorces. How shall we hedge against migratory divorce? This is a question of procedure, pure and simple, and in providing for residence before suit can be maintained, aud hedging it in by other conditions, we have put a bar against the migratory divorce. If these causes are just and true causes for divorce, if the injured one should not be compelled to forever live in a bondage like that; then let us say it is only a question of procedure, and we will see that justice is done to that now *bona fide* resident and citizen of this state which acknowledges these several good and legal and reasonable grounds for divorce.

REV. CAROLINE BARTLETT CRANE, Michigan: I am opposed to migratory divorces as much as any one can be. I am opposed to everything which makes collusion in divorce easy. I am just as much opposed to that as I am opposed to divorce for light and frivolous causes. I am opposed to the hasty granting of divorces. I am opposed to the re-marriage under most circumstances of the guilty party in divorce. I am opposed to everything and anything which allows the quick re-marriage of even the innocent party. But I do say, as the last speaker has so plainly stated, that the method to prevent these evils lies upon the grounds of procedure, and not upon the causes for divorce.

Now, I believe with the delegates here assembled, as the expression has been made almost unanimously, that divorce is a very great evil. But I do believe also that it is the result of precedent causes, and that there are even greater evils than divorce; and one of these greater evils than divorce is the injustice which will not give to the innocent and injured party any redress whatever anywhere within our country, because the laws in her own state do not give her redress for what public sentiment would agree should be a just and reasonable cause for divorce. I see no ground whatever for our stating that such and such causes are in the line of American legislation, and stating those things in a way as to show we believe they ought to be ground for divorce, and then making another resolution to read so that the person who lives in the state where none of these grounds—not even adultery—exists as ground for divorce must be condemned to live in the bondage of matrimony,

and not allowed to get redress in any other state. Let us by all means do everything in our power to prevent migratory divorce; let us do so by establishing a residence of at least two years in any state; let us make the most stringent regulations to control the matter of collusion; let us do all these things; but let us not do an injustice to innocent people by reason of any such resolution as that now before us. It seems to me that the aim of this Congress should be to prevent people from getting divorces who ought not to have divorces, and not to put endless obstacles in the way of those who have a moral right to freedom from the bonds of matrimony.

R. T. BARTON, Virginia: Just a few words. I will not speak on the subject at all. I think the mind of this Congress is made up; but I think something that has been said is apt to cause confusion, and possibly some references to it may avoid the necessity for debate on some other questions that may come up. My friend from West Virginia mentioned the fact that the number of migratory divorces was in the minority about twenty per cent. It is also true that cases of cancer are in the minority, or sores that effect the human body. But cases of cancer are the malignant sores; the others are apparently benign. So the migratory divorce, though only about twenty per cent., is the malignant divorce; those that are found at home are apparently benign.

As to the malignancy of the migratory divorce, it consists in two results: One is that one who lives in New York, marries in New York, and lives under the laws of New York, where there is but one cause of divorce, or one who marries and lives in South Carolina, where there is no cause of divorce, would be allowed to go from New York or South Carolina to South Dakota, and evade, avoid and disregard the laws of the State where he lived and entered into a matrimonial contract made there, and seek refuge in the State of South Dakota to get a divorce, to which he or she was not entitled at home.

But worse than that. Under the Constitution of the United States judgments in each state are entitled to the same regard in every other state as they are in the state where rendered. A man or woman may go to South Dakota from South Carolina or New York, comply with the provisions of the laws as to residence, and by collusion may obtain a divorce in the State of South Dakota, which is contrary to every feeling of decency of the people of New York or South Carolina, and yet come back to New York or South Carolina, and by virtue of his or her migration to South Dakota, may defy the laws of New York or South Carolina, and live in adultery, but be legally married people. This is the root of the whole matter. If this Congress did nothing but pass this resolution,

and secured the concurrence of the States of the Union on it, it would have done more for the laws and for the morals of the State and for common decency than it would if it sat here for a month and passed a resolution every minute. To my mind, it is the root of the whole matter, and I should be sorry to think that a single state or a single delegate would not give his hearty concurrence to the resolution exactly as reported by the Committee.

REV. DR. SAMUEL W. DIKE, Massachusetts: By your courtesy I am entitled to participate somewhat in your proceedings and rise only for the sake of giving information to the Congress on one point. The statement has just been made that twenty per cent. of divorces in the United States are migratory; and one of the gentlemen stated that ten per cent., if I understood him right, had been the estimate of Carroll D. Wright, and that Professor Howard had estimated two per cent. There is a great deal of misapprehension here. I had personally a share in the investigation which Mr. Wright conducted, and I know his opinion pretty well. The facts are these: that in 231,000 cases there were 19.9 per cent. where the marriage took place in some state other than the place where the divorce took place. Now, the report also showed that on the average 9.17 years elapsed between marriage and divorce; so as to give an opportunity for large migration legitimately between the time of marriage in Massachusetts or New York to the time of migration to Dakota; and you must subtract, therefore, from the 19.9 per cent. the very large per cent., at least two-thirds or three-fourths in order to cover those cases of legitimate migration from the state of marriage to the state of divorce. I heard a very intelligent gentleman say, who was accustomed to make estimates of this sort, he did not believe that more than four or five per cent. of the divorces in the twenty years ending 1886 were migratory; and it is also my personal opinion that migration for divorce is gradually diminishing, and that the investigation which is now ordered by Congress and will be made during the year will establish that fact. I say this for several reasons; in the first place, some half a dozen states and territories have raised their term of residence from ninety days and six months to one year; and, in the next place, restrictions have been made upon the re-marriage of divorced persons. And then I think public sentiment is so strong as to have something to do to check this feeling; so that migration for divorce, although a very serious evil, is but a comparatively small part of the whole.

May I say one word, by way of information to the Congress in regard to this matter under discussion? I will not venture to enter into the debates of the Congress; but what I want to say is this, that this measure has been a dozen or fifteen years the law of the State of Delaware. Delaware was afflicted by persons coming from

New York and obtaining divorce. Judge Stroud caused a bill to be passed in the Legislature saying, "This state shall not entertain a suit for divorce from a citizen of another state unless it was cause in the state where the cause arose," and that ended the migration. And we of the League of the Family have from year to year advocated the consideration of this measure. The question is not as to the right of the states; the question is to the right to protect its own citizens. And are we of one state under any obligation whatever to observe the principles of comity, the rights of people of New York, and not make the people of New York bring about their own laws? This matter, without expressing any opinion upon it, is a matter of extreme importance.

DR. FANNY LEAKE CUMMINGS, Washington: For me to get up here and talk on the subject without deep feeling, would be impossible. A gentleman told me that about 80 per cent. of divorces were applied for by women. Did anybody else mention some other per cent.?

DR. SAMUEL W. DIKE, District of Columbia: Sixty-seven per cent. are granted to women.

VICE-CHANCELLOR EMERY, New Jersey: Can I answer the question from a practical standpoint? After receiving the letter from the Governor of New Jersey, I requested my clerk to look over my divorce docket for the purpose of seeing, among other things, the proportion of divorces granted as between husband and wife. Of 800 divorces, there were 600 for desertion, of which 400 were by the wife against the husband; the proportion was rather more than two to one of claims for desertion. On the charge of adultery, there were about 100 of each, and also on the charge of bigamy there were a small number; but of the 800 that were taken from my own personal list that represented about the situation—two or three to one.

DR. FANNY LEAKE CUMMINGS, Washington: You hear the overwhelming testimony of the gentleman in regard to these suits for divorce. I wish there were more women here to hear this. I speak to you here on a subject that ought to be heard for a little while. I was surprised at the indifference to the paper from the gentleman from West Virginia a while ago, to the paper so full of seed thoughts, so full of truths. I admit with the gentleman that it is a terrible ulcer, this divorce matter; and nobody regrets it more than I and the good women of this land. We would like to see this divorce business stopped. But I will tell you right now that you

cannot make a stream clean by damming it up at the bottom, at its mouth. You want to put some clean water into it at the head of the stream if you would clean it out. When I tell you, my friends, that 770,000 young men of this country reach what is called the danger line, and out of that 450,000 of these young men have contracted venereal diseases before marriage; and when I tell you as a physician that eighty per cent. of all the deaths from inflammatory troubles, from female diseases, are caused by this terrible cancer, and when I tell you that forty-two per cent. of the abortions are caused by this terrible cancer, I tell you that to put a little poultice on top of it is not going to cure the cancer. No, it is not, my friends. You have got to make a cleaner marriage record; you have got to make cleaner marriages. Do not tell me that, because a woman is tied to you, because you are the bread winner, these women are dependent on you, this thing can go on. You all know women are not suing for divorce on the ground of adultery. If they were, there would be a terrible lot of divorces, I tell you. I know that in my practice, had I told the patients what I was doctoring them for, there would have been a great lot more of them.

Now, I want to say to you here, here is a woman down in South Carolina, or a woman here in New York, whose husband is living a licentious life; he is not fit to put on posterity his progeny, the law should step in and say, "Young man, you should not marry;" and when they are, there are divorces when you do not clean the source. When I can take my beautiful daughter that I have raised in innocence and purity, and the most licentious young man in the city, who is a ladies' man, and who can talk nice and sweet, and he goes and wins my beautiful daughter and takes her away from me because she is eighteen years old—God bless her—she could not go astray—I cannot say, "No;" you know full well she is not twenty-one years of age; she could not sign a deed to a piece of land; but she can give her beautiful self to this licentious young man, and because he lives in New York, because of the accident of birth, he takes her to New York or South Carolina, must my daughter suffer all these things? God forbid. I praise God that there are men in this country who are broad enough that when the glamour is worn off, and my daughter sees the thing as it is, and like the prodigal son she has come to herself, and sees where she is—shall she bring into this life children not fit for humanity? It is not a question whether we are going to hold this woman and man together and have more children, or whether we will have better children. We want better children in this America that can stand every man a king, a king among men.

Now, I ask you, gentlemen, not to pass this resolution. If my daughter lives in my home down here in New York or in South

Carolina, and is married to this dissolute young man, and she finds all these terrible causes in her life, I do hope this Congress will put it—I do hope this Congress will put in as the sense of this meeting as reasonable causes for divorce—I tell you to-day, ladies and gentlemen—principally gentlemen—I tell you that any number of children in this land to-day are born into vice, and are no more responsible for that vice than the children of the reverend gentlemen of my acquaintance are responsible for following their fathers' profession. These great underlying laws of heredity—every physician, and there are a few here, knows that there are two great underlying laws of heredity; first, is that law under which individuals bequeath to posterity all those characteristics of class or race or kind; the other great underlying law of the changes taking place during the lives of the individual bequeathed in them. That is humanity's hope. That is were men and women stand as kings and queens before the whole world—when we purify the marriage altar. Do not make it so easy. This dissolute young man goes down to the Rev. So and So in my county, and he can swear and she can, that she is eighteen and he is twenty-one; and it does not make any difference what I say, they take my child and pollute her. Now, gentlemen, because my child is suffering—she did not know he was a drinking boy, this boy—she was entirely ignorant, but she lived down here in South Carolina, or she moved up here to New York, and the boy takes a drink, and he is dragging her down—I am talking more than my time, but there are not very many women here, and I am sure you gentlemen will have patience with me—he is dragging my child down; and I want to tell you that the drink habit is proven, as any medical man or woman will bear me out in saying, to extend to the third and fourth generation, and even further; it goes to posterity—should we have these marriages continued? Would you have this woman still linked to this vile creature, and bring into the world such children? God forbid. Would you link her children—you see along this same line of heridity, change into lives of individuals bequeathing these characteristics—take this profligate young man, do you think he can be the father of pure children? Indeed, he cannot. God has ordained it so, nature has proven it; and from the time it was thundered from Mount Sinai, down to this present day, science has proved it as well as religion. And we know to-day that wherever we turn that father is making bad children, with rare exceptions.

Of course, we have lovely mothers to offset these bad traits in our existence. But I tell you here, gentlemen, we hope there is not a man in this audience that will be so oblivious to the cry of pity from those 400 out of 600 that the gentleman tells us of—so oblivious to the cry of those women who have only asked for relief

as a last resort, when this thing can no longer be endured. The world is very hard on woman. Men can earn their bread and butter. I have been for twenty years in the work, and I know how hard it is for most women to make bread and butter; and I tell you that women rather bear the ills they have than fly to others they know not of. Many of them have been so diseased by this terrible plague and scourge that I have spoken of. They are not competent to earn a living for themselves, and these women will bear on and on and on before they will ask for this relief. Now, if this woman continues to be in a state where men are so fossilized that they will not pass laws for their relief, shall she be tied to such a man as I have described? I ask you that it may be the sense of this Congress that you do not pass this resolution as it stands.

W. O. HART, Louisiana: I trust that statement of the gentleman from Virginia that the mind of this Congress on this question is already made up, is not true. Why, gentlemen, I trust our minds are as free and undetermined on this question as a jury while it is hearing the evidence and argument, and waiting for the final word from the judge. I do not believe, Mr. President and gentlemen, that our minds are made up. I believe we are here to be convinced and, to be reasoned with, and if an impression is upon our minds, even that will be removed if we become convinced the impression we hold was an incorrect one. I say, Mr. President, let justice be done, though the heavens fall; do not let us provide or recommend a rule of law or practice here which may be a very good one, but which at the same time may do the grossest injustice. I honor the gentleman from North Dakota, who, rising in his seat to-day, said he was opposed to divorces in any and all instances. If any word of mine could stop divorces in this country, that word should be uttered. But in this age in which we live, in the circumstances which surround us, I say, and I say it with due respect to the gentleman from North Dakota, divorce under certain circumstances is just as necessary as marriage itself. The only question then to determine, the only thing we are called upon to recommend is to minimize the divorce evil. But let us not do injustice to a single soul, man, woman or child. Mr. President, the Civil Code of Louisiana, the grandest book that ever came from the hand of man, and which provides for every possible contingency in law and morals, meets the issue that we have been discussing this afternoon. In that incomparable book, provision is made, as is made nowhere else, for the wife; the husband does not need the same protection that the wife gets in any case, and certainly not in the question of jurisdiction as to divorce cases. Why, as was well said by the gentleman from Pennsylvania, the Chairman of the Committee on Resolutions,

as long as no fact has happened to entitle the wife to a divorce, the domicile of the wife is that of the husband, The wife can have no separate domicile until something has been done by the husband which authorized the wife to withdraw from his domicile. Then she may obtain for herself a separate domicile, but until that time arrives she has no domicile except the domicile of the husband; and it is the duty of the wife to follow the husband wherever he may go. As long as he behaves himself, any domicile which the husband selects the wife must go to. And she has no choice, no choosing. Therefore, as to domicile, a protection is necessary to the wife which is not necessary to the husband. And the law of Louisiana again provides for that contingency. Therefore, Mr. President and gentlemen, we should provide, we should recommend some provision that will protect the rights of the wife as to domicile and jurisdiction. As I say, the husband does not need protection, because he selects his own domicile. If the husband and wife live in South Dakota and are married in South Dakota, and the husband chooses to go to South Carolina to live, he cannot complain that the laws of South Carolina restrict the rights of divorce, because he selects that domicile. But the wife has no choice in the selection of that domicile. She goes with that husband to South Carolina, and the husband there is guilty of an offence against her and the State, and the laws of God and man; and yet when she goes back to her home in South Dakota, driven there by the excessive cruelties and outrages of her husband, she has no redress because in South Carolina, where these things occurred, she could not bring the suit. To meet that issue, I move an amendment that these words be added as an amendment to this section:

"Or where the wife be complainant, in the State where she was domiciled at the time of her marriage," so that the resolution will read:

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile, or where the wife be complainant, in the state where she was domiciled at the time of her marriage."

C. LA RUE MUNSON, Pennsylvania: That is the way it was in the original resolution.

C. O. HART, Louisiana: That, Mr. President and gentlemen, protects the wife. As I have said, the husband needs no protection; he selects the domicile. If he wishes a divorce, he must get it somewhere else than in South Carolina, because he made the choice. But the wife has nothing to do with making the choice. The domicile is forced upon her. And when she is driven from the

domicile by the acts of her husband, I submit she should have some right as if the cause of action had occurred there; that her right should be governed not only by what occurred in the place of her domicile, where her marriage took place, in that domicile from which she was taken by her husband, that domicile which she was compelled to leave.

F. L. SIDDONS, District of Columbia: I second the motion offered by the gentleman from Louisiana, and call the attention of the Congress to the fact that the resolution, as submitted by the Pennsylvania delegation, contains just the section in favor of the wife that Mr. Hart now proposes, and it went out in the Committee, and I myself voted against that going out. I was overruled. Therefore, I take a great deal of pleasure in seconding Mr. Hart's motion. If the resolution is adopted as now offered by the Committee it contains something of an addition or restriction upon the amendment proposed by my friend from Maryland, which was adopted overwhelmingly; therefore I think the amendment proposed by the gentlemen from Louisiana is eminently proper, and expresses the view of the delegates from Pennsylvania.

C. LA RUE MUNSON, Pennsylvania: The delegation from Pennsylvania gave this subject long study, and recommended to you a resolution which will be found on page six of the Suggested Resolutions. The Committee on Resolutions, in their wisdom, saw fit to omit that portion which Mr. Hart now offers as an amendment. We believe that the sole exception to this general rule should be afforded to the wife whose domicile is a forced domicile when it becomes a matrimonial domicile; and that she, returning to her original state to the domicile of her home before her marriage, should be permitted to invoke the assistance of that Court, among her friends and her relatives in her action of divorce against her husband. And so it was that this very amendment was included in our resolution; and I speak for my colleagues when I say that we are in favor of the inclusion in this resolution of the amendment of the gentleman from Louisiana; and I therefore second it.

JUDGE ALFRED WOLCOTT, Michigan: I simply want to say this amendment which has been suggested will be acceptable to the delegation from my State. I want to say a word, that there might be no misapprehension. I moved the re-consideration of this resolution. I did it because I believed that it deserved the careful consideration and discussion of this Congress. I think the discussion we have had here has justified the full deliberation on this point. I want to say, speaking for myself and the other delegate from my State, there is not in our opposing this resolution any idea to favor

in any way easy and migratory divorces. From an experience of six years on the bench, when I had perhaps a hundred cases every year, fortunately or unfortunately, and the practical knowledge I have had of the question, I believe and I speak my earnest convictions from the experience I have had, I want to see done whatever can be done by this Congress in the way of suggested laws, or code or principles that will tend to remedy the evil—not to abolish divorce because we are legislating here; our aim is to legislate for society as we find it, men and women as they are, not as we wish they were, or might hope they were. We must simply recognize the conditions before us, and seek, as far as we can, through the work of this conference, to prevent the fraudulent, collusive and undeserved divorce, but not undertake to place a bar in the way of one, who, under every law, it seems to me, of right and morals, the innocent party, ought not to be debarred when the wife or husband has subverted the entire marriage. I say the innocent party ought to be permitted to have a divorce; and what the states may do if we adopt a code of laws, how far they may come to an agreement, none of us know. It is very doubtful whether New York, which has been cited as having only one ground for divorce, would recede from that position. I am not here, I think none of us are, to ask her to; I am satisfied, in looking over the laws of various states, there are many more causes than that said to be valid cause that finally may be adopted.

JUDGE JOHN H. STINESS, Rhode Island: The proposal of the Committee as made to the Congress here is exactly in accordance with the proposal of the Commissioners on Uniform State Laws, who considered this question from year to year, covering in all, I think, a period of three years; where they fully examined the reasons for and against this phraseology and finally adopted this as it is now before us, without the proposed amendment, but as it comes from the Committee. It is based upon this principle that where an act in any state is not contrary to law, it is against legal reason and justice to make that an offence by one party moving into another state; and that is all that it amounts to. True, you may conceive of cases of great hardship; they may be very pathetically described, as they have been on the floor of the Congress; but what we have to look at in drafting laws of this kind is, not for every possible case—for no law can ever reach that limit. We have to content ourselves with drafting laws for the greatest good to the greatest number. And when we find, as has been the case over and over again—and I believe the percentages given here must be too small from my own observation—parties do go from one state to another in order to secure the benefit of the laws of that state which

were not granted in the state of the matrimonial domicile, it seems to me that we ought, in a Congress of this sort, to hold to that which has already been carefully considered, acted upon by the Commissioners from the different states of the Union, approved by the American Bar Association, and approved and sent in to us by the report of the Inter-Church Conference. In view of those facts, would it not be better, in this statement of general principles, to leave this resolution just as it has come from the Committee, and without the amendment?

AMASA M. EATON, Rhode Island: I wish to add a few words along the same line, in conjunction with what my colleague, Judge Stiness, of Rhode Island, has said by calling attention to the case of Andrews vs. Andrews (188, U. S. 15). I wish to call the attention of those present to the fact that the resolution now proposed, without any amendment, as it is proposed by the Committee, is in line with that decision; and that to pass the resolution in any other form would violate the spirit of the decision of Andrews vs. Andrews in the Supreme Court of the United States. That case was simply this: the couple were married in Massachusetts; one of them moved to Dakota and there procured a divorce on the ground of desertion, desertion at that time not being a ground of divorce in Massachusetts. The courts of Massachusetts refused to recognize the divorce, and the case went to the Supreme Court of the United States, and the Supreme Court held in that case that the refusal of the Supreme Court of Massachusetts to recognize divorce obtained in that way was not in violation of the provision of the Constitution of the United States, which requires the courts of one state to give effect to the judicial decisions of another state. Therefore, the provision as it came from the Committee is exactly in line with that decision by the Supreme Court of the United States; and it seems to me it should be adopted.

G. W. CASE, South Dakota: It seems to me that this resolution is one of the most important of the entire series that will come before the Congress for consideration. I know that it is the sense of this Congress that only wise conclusions shall be reached; therefore, I move as a substitute to all pending amendments that this be deferred to ten o'clock to-morrow morning, that members of this Congress may have time to consider it.

Duly seconded.

W. O. HART, Louisiana: I ask unanimous consent to substitute for my amendment the original resolution 2 as it appeared in the draft prepared by the Pennsylvania delegation. It meets the same object, and is probably in a little better language. It is as follows:

"2. When the courts are given cognizance of suits where either of the parties were domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that, excepting in cases of adultery, or in the case of a wife returning to her original domicile, relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

The PRESIDENT: The gentleman from Louisiana withdraws his amendment, and offers the original resolution as presented to the Congresss.

W. O. HART, Louisiana: I withdraw the request; my second declines to join me.

The PRESIDENT: The motion is then to postpone the whole matter until to-morrow morning. Is the Congress ready for the question?

The question being upon the motion to postpone, it was not agreed to.

The PRESIDENT: The question now is upon the amendment by the gentleman from Louisiana.

The Secretary read the amendment as follows:

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile, or, where the wife be complainant, in the state where she was domiciled at the time of her marriage."

The PRESIDENT: Are you ready for the question?

JUDGE S. C. STIMPSON, Indiana: I regard this, as the gentleman from South Dakota has just said, as the most important question that can come before the Congress; and it should not be passed upon at all hastily, until we all thoroughly understand it and its importance. I want to speak in favor of the resolution as presented by the Committee, as tending to discourage divorce. There is ample room for divorce now, and we think the effort should be to discourage divorces. My judgment, from long experience, has been that there is more unrest where the divorce laws are lax; the more causes you have, the more unrest there is, and the more applications for divorce. I am satisfied that in South Carolina, where they do not have divorce at all, people are more contented than they are in my State of Indiana where divorce is so easy.

In a long term of years on the bench, I have been granted more divorces than the Vice-Chancellor of New Jersey, according to his

report. And I have been heart-sick many a time at having to perform that duty, because it concerns not only the two persons engaged to the marriage contract, but it concerns the children, the offspring, and it concerns the home, and the community; and then it concerns the State. You have been talking about the justice and the injustice to one party or the other. That is not the sole question. I know some people consider the marriage contract as a purely civil contract; it is a civil contract; but I say it is more—it concerns society in general; it concerns everybody. And although we want to do justice as far as we can, between the parties directly concerned, we must also take into consideration the rights of the State and of the community; and therefore we must legislate for the interests of the community, that is, make laws that shall be most helpful to the greatest number of people. When the marriage contract is entered into, parties should understand—they are supposed to understand—that they are making a contract which concerns the public; and that the public has some interest in that contract; that they cannot enter into it with levity and heedlessness, and expect to be released from their own foolishness.

And that leads me to say that the license law and the marriage law has a very great deal to do with the divorce business. I have taken pains to ascertain from what sources our divorce clients come, and I find the clients that are most liable to apply for divorce are those married before magistrates. I think two to one of the parties that apply for divorce in Indiana are parties that have gone recklessly or carelessly before some magistrate, with no witnesses excepting the rabble that crowd around the office of a justice. The justice of the peace tells them they are man and wife; and that is all. What levity! Do they appreciate the importance of the marriage contract—the sacredness of it—the importance of it? Not at all. I say if we are going to deal with this divorce question we have to get farther down than changing only the statutory form of divorce. We have got to get at the root of the evil. I think it was a very happy thing to refer that resolution in reference to marriage licenses to a committee of five to report some resolution on the question of marriage license, and the license law. I think there is where the great trouble arises—in hasty marriages, ill-considered marriages, clandestine marriages. If they cannot get married at home, they step over the state line and get married, and come home and tell their people they are married. That is at the very bottom of the matter; and I do not want this resolution passed upon now, until everybody thoroughly understands it. I think it is the most important one that has come up before us; and I stand here heartily in favor of the resolution. I think it has a tendency to discourage divorces; and so far it is good, and ought to prevail.

C. LA RUE MUNSON, Pennsylvania: I offer as a substitute for the amendment of Mr. Hart, of Louisiana, the following:

"2. When the courts are given cognizance of suits where either of the parties were domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that, excepting in cases of adultery, or in the case of a wife's returning to her original domicile, relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

The PRESIDENT: Is that accepted by the gentleman from Louisiana?

W. O. HART, Louisiana: I accept the substitution.

The PRESIDENT: The question is then upon the substitution.

PRESIDENT WARREN, South Dakota: I find myself hesitant to take a position opposed to that of Dean Sterling, who stood by my side, and who is at the head of the University Law School, and who has always stood for every good thing in South Dakota. I am only one of a great many in the State of South Dakota to whom the situation is thoroughly offensive, a stench in the nostrils of multitudes of people. In these figures as to migratory divorces, of course, accuracy is difficult; but probably five to ten per cent. of divorces granted are migratory, where parties go to another jurisdiction for the purpose of seeking a divorce; and we are told they are very largely concentrated in one state. They are not, I trust, a majority of them, found in South Dakota; but where, as related to the total number, so large a percentage of them are of that character, the effects are disastrous. Our observation is that they are largely frivolous, wealthy people, whose presence among us is unfortunate. Of course, there are many exceptions, but that seems to be the usual fact. It looks to me as though this Committee had gone to the root of the matter when they insist that the cause should be one admitted by the state that is the domicile of one of the parties where the cause arose. Why should the State of South Dakota have the right practically to nullify the laws of a state of five or six millions of people? If there are hardships involved in the residence there, why, the people who live there must take the consequences involved; and the presumption is the solid judgment of many millions of one state has some ground for being put into the statute laws. So far as the State of South Dakota is concerned, I want to say the situation is not as bad as I understand it to be in some states. There are four to five hundred divorces in the state—about one to eight, as compared to the marriages, according to the figures of Dr. Dike in his report. The Indiana record shows a higher percentage, and between two and three hundred majority. These figures are easily gathered now in an official way.

It looks to me as though, from our standpoint, and our desire to cure that situation, and make South Dakota reputable, the proposition embodied in the rule of the American Bar Association would go to the root of the matter and cure the evil.

We talk about justice to individuals, and there are agonizing wrongs often involved in all our relations. But we must not forget the rights of society and the State. There has been very much said about that side of it—as to whether relieving exceptional wrongs will ultimately work social disaster. I think at this moment of a man who was a student in our institution fifteen or twenty years ago, and now a minister in New England, whose father and mother separated under South Dakota laws, both good people, too; but it was easy to obtain a divorce; and he said that he felt keenly the shame and stain of that in his life, and that if he ever got a chance he would hit that evil between the eyes.

It seems to me that if the decisions of this body are to carry convincing weight, we must be substantially agreed. And to force this thing to a conclusion now, when there is a desire for more time for further consideration, its seems to me would be a mistake. I therefore hope that the motion to defer decision until to-morrow morning, for further reflection and conference, will obtain, in order that a more unanimous judgment may prevail.

DEAN STERLING, South Dakota: I have already spoken on this question, but I ask to say a few words more.

The PRESIDENT: If there is no objection from the House, the gentleman will be permitted to speak again.

(There being no objection, Dean Sterling continued:)

DEAN STERLING, South Dakota: In reference to this question to postpone further consideration until to-morrow on this most vital question, I hope it will carry; because I feel that ample consideration has not been given to it. There are members of this body who want to think further upon this—what might be called the turning point in the deliberations of this assembly. Let me suggest this—What does this body want to do? I suppose to enact the thing here, or recommend that code of laws which will be acceptable to the majority of the states of the Union. And unless they do something of that kind their work is of little practical avail or benefit. Now I will warrant this, that when the matter comes up for discussion in the legislatures of the different states of the Union, one-half at least would not support a measure embodying the provisions of this resolution 2. And the argument would be made there that, if there are reasonable grounds for divorce in another state, and either party seeking the divorce being a *bona fide* resident and citizen of

that state, that that party ought to obtain the divorce upon the reasonable ground provided in the state where the action is brought. One word, Mr. President; what is the source of the evil of the migratory divorce, to a large extent that has been commented upon here, as though we would reach the source in passing resolution 2? You will find the greatest source of that evil, the migratory divorce, in the extreme laws adopted by such states as New York, because people say, "We are driven to a State where we may free ourselves from this intolerable bond.

DEAN HUFFCUT, New York: I think it only fair to say, in behalf of the State of New York, that while the causes for absolute divorce in that State are not numerous, the causes for divorce *a mensa* are quite liberal; and, while I have been deeply touched by the story of the woes of married life, being myself a bachelor, I am not able to appreciate all of them. I am bound to say that there is not one of them that has been brought before this Congress this afternoon that could not be remedied by a decree for legal separation under the laws of the State of New York; and that it is not necessary for a citizen of the State of New York to go to Dakota, or anywhere else, to relieve himself or herself from these intolerable burdens, and to do it in a perfectly lawful and legal way. They are bound to go to another state for that purpose only if the desire to try the experiment again, and if they come within the category mentioned by Dr. Johnson as those cases in which hope triumphs over experience.

Now, I would also call the attention of the Congress to the fact that these resolutions themselves provide under No. 4—if we ever succeed in discussing No. 4—that all states should also provide a liberal code of laws for divorce *a mensa*, and that there should be provided everywhere a means of lawful separation, when the burdens of matrimony have become intolerable. But it is quite another thing to say that there shall be an absolute divorce, after which these two persons, both, or at least one, of whom has shown himself or herself unfit for the state of matrimony, may go again and foist upon society another mistaken marriage, and a second divorce. Now, let us pass this resolution No. 2, and the result will be to cut off migratory absolute divorce. Let us pass No. 4, and the result will be to give to every unfortunate victim of the marriage state a lawful means of freeing himself or herself from that condition.

AMASA M. EATON, Rhode Island: I am sure there is no disposition here to crowd this matter. On the contrary, there is every disposition to give just as much time for consideration as any one wants. As it is past the usual hour for adjournment—

The PRESIDENT: Mr. Eaton is mistaken; we still have ten minutes.

(Calls for the question.)

FRANK H. KERR, Ohio:-I move that the meeting adjourn.

Duly seconded, but lost by a vote of 24 ayes to 30 noes.

The PRESIDENT: The vote will now be taken upon the amendment offered by the gentleman from Pennsylvania in substitution for that offered by the gentleman from Louisiana.

The Secretary proceeded to call the roll of the states, and upon reaching North Dakota;

M. H. BRENNAN: North Dakota reluctantly casts its vote on this proposition aye. It is class legislation under our Constitution. We cannot comply with the provision if adopted, because of the exception; we are in favor of the principle, however.

(The Secretary resumed the roll-call, and upon reaching South Dakota:)

PRESIDENT WARREN: South Dakota votes aye, for opposite reasons.

(Upon reaching Washington:)

DR. FANNY LEAKE CUMMINGS: I want to say, I vote no, because I am opposed to the whole thing.

The PRESIDENT: Without giving your reasons, which way do you vote?

DR. FANNY LEAKE CUMMINGS, Washington: I vote no.

The roll-call being finished, the Secretary announced 15 states vote aye, and 16 states no; whereupon the President declared the amendment lost.

The PRESIDENT: The Secretary will now read the resolution as reported by the committee, and will call the roll for the vote thereon.

The Secretary read as follows:

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

And the roll-call being finished, reported 26 states voted aye, and 4 states no; whereupon the President declared the resolution adopted.

The PRESIDENT: You still have one minute, if some delegate will talk promptly before adjournment.

CHARLES F. LIBBY, Maine: I move we adjourn.
Duly seconded, and agreed to.
Adjourned.

THIRD DAY.

Morning Session.

Wednesday, February 21, 1906.

The Congress re-assembled at 10 o'clock A. M., pursuant to adjournment, President Pennypacker in the chair.

Rev. A. J. D. HAUPT, Minnesota: I ask, Mr. President, as a question of privilege, to present this morning the action on marriage and divorce taken by the General Assembly of the Lutheran Church at its 13th Annual Convention, held at Milwaukee, September 17th, 1905. This assembly represents two million communicant members.

The PRESIDENT: The Secretary will file the communication.

JOHN GARLAND POLLARD, Virginia: I desire to offer the following resolution which I ask to be read and referred:

"Whereas, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem; and

"Whereas, Only eleven of the states now provide for such collection and publication;

"Therefore, Be it resolved that this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary of this Congress to the governors of all the states for submission to the legislatures thereof, with the object of securing as near as possible, uniform statutes upon the subject."

The PRESIDENT: The resolution will be referred to the Committee on Resolutions.

Yesterday the President was directed to appoint a committee to consider the advisability of reporting legislation upon the subject of marriage. I appoint as that committee:

George E. Gardner, of Massachusetts, chairman; H. K. Warren, of South Dakota; Joseph W. Fellows, of New Hampshire; J. R. Thornton, of Louisiana; Judge S. C. Stimpson, of Indiana.

Has the Committee on Credentials any further report to make?

W. O. HART, Chairman, Louisiana: On behalf of the Committee on Credentials, I desire to submit the following report supplemental to the one of yesterday:

Washington, D. C., February 21, 1906.

To the Congress of Uniform Divorce Laws:

Your Committee on Credentials beg leave to report that since the making of its report on February 20, 1906, there has been presented the credentials of A. B. Andrews, Jr., as a delegate from the State of North Carolina.

Said credentials are in proper form and are hereto annexed, and your committee recommends that Mr. Andrews be recognized as a delegate to this Congress, be placed upon the permanent roll and entitled to a voice and vote in all future proceedings.

Respectfully submitted,

W. O. HART,
Chairman.

I move that the report be received and adopted.

Duly seconded, and agreed to.

The PRESIDENT: Has the Committee on Procedure any further report to make?

BENJAMIN NIELDS, Chairman, Delaware: None.

The PRESIDENT: Has the Committee on Resolutions any further report?

WALTER GEORGE SMITH, Pennsylvania: When the Committee on Resolutions met yesterday evening unfortunately there was not a quorum present; but I feel confident that the committee will approve of my recommendation in favor of this resolution introduced by Mr. Eaton, of Rhode Island, which was the only one before the committee:

"Resolved, That the Chair appoint a committee of five members of this Congress to consider the propriety of adopting a uniform marriage law, with power to report such a uniform marriage law, to be recommended for adoption."

Inasmuch as the President has just now appointed a committee to consider a uniform Marriage License Law, this resolution of Mr. Eaton would properly come before that committee, and I take upon myself the responsibility, therefore, on behalf of the Committee on Resolutions to recommend that this resolution be referred to the committee of five just appointed by the President.

Duly seconded, and agreed to.

E. D. LEACH, West Virginia: What I want to say here is concerning a matter which I feel is necessary that it should come before

the Congress; and I want to preface my remarks by saying that there is not a particle of animosity as far as I am concerned in regard to it—

The PRESIDENT: I am sure there is not.

E. D. LEACH, West Virginia: But in conversations I have had with quite a number of the delegates, and especially from the Western and Southern States, I learn that there is a growing distrust concerning the sincerity of certain delegates representing States in the Congress who have a higher, or what they call and what is generally known as a higher standard of divorce laws than the majority of the states of the Union have. Now it was the understanding, I think—

The PRESIDENT: I think we all understand that there is nothing of the kind here. (Applause.)

E. D. LEACH, West Virginia: I know that there is a distrust, and what I want to do is to have it removed, if possible.

The PRESIDENT: I feel satisfied that there is no distrust among the delegates of the Congress anywhere.

E. D. LEACH, West Virginia: I differ with the Chair as to that. If the Chair would permit me—

WALTER GEORGE SMITH, Pennsylvania: If the gentleman has a question of privilege, he should state it. If not, the Convention has very important business before it, and its time is very valuable; and as chairman of the Committee on Resolutions, I shall have to ask for the regular Order of Business.

The PRESIDENT: The point of order is raised, and I fear I shall have to determine it. I can see no way of determining it except to sustain the point. There is no resolution or anything before the Congress.

WALTER GEORGE SMITH, Pennsylvania: If I am in order, I will proceed with what I understand to be the regular order—the consideration of the report of the Committee on Resolutions; and I will ask the attention of the body to resolution 3, and will read it:

3. Not less than two years' residence should be required on the part of a plaintiff who has changed his or her state domicile since the cause of divorce arose.

I move the adoption of that resolution.

Duly seconded.

HENRY RIDGELEY, Delaware: I have an amendment here which I move shall be added to resolution 3. I would like to ask the Secretary to read it.

The Secretary thereupon read the amendment, as follows:

"Except where being a wife she has returned to her original domicile."

HENRY RIDGELEY, Delaware: I do not want to rehash what we went over yesterday afternoon. I voted yesterday against the proposed amendment of resolution 2, and the reason that I bring this in to-day is because I think this presents a different question; and it seems to me it will, in a great measure at least, solve the inharmony—of course it has ceased—which for a time seemed to be in this convention. The idea of that resolution 3, as I understand it—

The PRESIDENT: Before proceeding to debate, is that amendment seconded?

F. L. SIDDONS, District of Columbia: I second it.

HENRY RIDGELEY, Delaware: The idea of resolution 3, as I understand it, is to prevent migratory divorces; and I want to say that I am willing to do anything to prevent that. To my mind, whether the per cent. be twenty, ten, five or two, it is a scandal. The fact that, in the United States, one case can occur of a pure migratory divorce seems to me to be a reproach upon the whole Union. Now the question is, whether this amendment I have offered will do that. If it will aid in migratory divorces in one case, then I would vote against my own amendment; but it seems to me that it would not.

After we have passed resolution 2, which states that no cause can be considered unless it was at the time a cause in the state where the plaintiff resided, it seems to me with that safeguard, the effect of this amendment to resolution 3 will not prevent comity between the States and will not cause the decision of the Supreme Court of the United States, which was referred to yesterday, to be overturned or ignored; but will simply do this: Where the wife has a good cause of divorce, it is necessary for her to leave her husband, also she may condone the offense. Where is she to go? The natural place for her to go is to her ante-nuptial domicile, where her friends are supposed to be. She goes there. What harm is being done? That state, following resolution 2, cannot take jurisdiction and grant her a divorce unless for a cause which was good in the state where she was domiciled at the time. Therefore, the state, from which she has removed, cannot say that its laws have been disregarded, since the State to which she has returned recognizes and carries out the law, just as much as if she were in the boundaries of

the state where she had been domiciled at the time. So that you do not get any conflict between the states. One state expressly recognizes and carries out the laws of the other state; and the only point is that you give an opportunity to the wife who has been injured to return to her natural and former place of residence. To give a case in point, suppose, for example, a wife is married in Pennsylvania, and removes to Delaware. Six months after her removal to Delaware, the cause for divorce occurs. She would be compelled to stay there—compelled to stay there two years before she brings her application. It might take from six months to a year for her to get her decree nisi, and if we adopt the resolutions following later on which say that an absolute decree shall not be granted for one year. You, therefore, have her staying there from three to four years, in this case, which is not merely a hypothetical case, but is a case that does happen frequently. How is she going to maintain, perhaps, her domicile there. She must leave her husband, or condone the offense, if she has not an independent fortune. What must she do? She must be a bread winner. She cannot go back to her friends without being deprived of her rights.

Now it seems to me, with resolution 2 carried as it has been carried, that this amendment gives to the wife the privilege referred to without at the same time causing any conflict between the laws of the states, and without doing any injustice to any one.

JOHN C. RICHBERG, Illinois. Our object is uniformity, and we cannot accomplish uniformity by adding to well-considered sections of a proposed code. There are doubtless many exceptional cases. The amendment, as it strikes me, would only be pertinent in rare cases. The wife, who is domiciled with her husband, whether for one year or twenty years, as the case may be, has removed from the place where she was married; and the chances are much more likely that she will not return to that place, but remain at the place where her children were born and reared, where her husband resided, where she has formed new associations and new alliances, rather than return to the state from which she came. It seems to me that this amendment, while perhaps not objectionable in many of its features, yet, at the same time, goes into the question of an exception.

Now, the more we load down the different sections of a proposed code, with exceptions that may occur here and there, the less will we reach a conclusion that would be generally acceptable to the majority of the states as a uniform code; and, by taking the average sentiment of the different people of the different states we have reperesented here, we will obtain what we can readily agree upon. There are from three-fourths to four-fifths of the states of this Union that are practically in accord to-day on this question of di-

vorce, both as to the causes and method of procedure; and it ought not to be a very arduous task for us to agree upon a general uniform bill which will express absolutely, as it has been expressed up to the present time, the sentiment of three-fourths to four-fifths of the states of the Union. And in the interest of uniformity—I am as much opposed to migratory divorces as any man here—I think one of the best ways to acomplish that is by a uniform bill, so that those who desire to flee from the bonds of matrimony in New York or South Carolina will not find a haven or refuge in a sister state; and it will force the States of New York and South Carolina and other states, if the sentiment of their people so desire, to enact uniform legislation or give no relief to their citizens whatever.

If the citizens of the State of New York or South Carolina do not desire a divorce code, nobody desires to force it upon them; but what we do desire to stop is that those citizens should go to the states that do have a systematic code and there seek the freedom and liberty which is denied them in their own jurisdiction. I think that the tendency would be that the states that are not in unison with those states would eventually come in; and we would not have the spectacle, as stated by the gentleman from Delaware yesterday, where the New York people until they enacted a law, which practically prohibited them in that State, invariably went to Delaware for the purpose of obtaining a divorce. And when Delaware changed her laws, they went to the Western States. And that is what we have to-day, although I think it is greatly exaggerated. However, I remember very well the time when Indiana was considered the Mecca for parties desiring a divorce, and then came Illinois and then the Dakotas, now Oklahoma or Manitoba. Now, the requirements of the laws for divorce in Illinois are as stringent as three-fourths of the states of the Union. It requires a residence of two years; every proceeding must be had in open court—we have not had a case referred to a Master in Chancery in that State for thirty years.

The PRESIDENT: The next place will be the Sandwich Islands, you think?

JOHN C. RICHBERG, Illinois: Very likely.

WALTER GEORGE SMITH, Pennsylvania: I am sure that this Congress will not think the Committee on Resolutions, or its chairman, has the slightest desire to restrict debate. I am going however to make a suggestion to the members of this Congress—We have come here, many of us from a great distance, many of us at great expense, and is it not wise, that having thoroughly discussed a subject and having voted upon that subject, it should be considered that the sense of the Congress has been arrived at? This subject that the gentleman from Delaware has introduced—the merits of

which I will not attempt to discuss, in view of the very luminous and pertinent remarks of the gentleman from Illionis, was brought before the Congress yesterday and discussed at great length. I appeal to him, and I appeal to those who think he is right in this matter, to consider that, as the gentleman from Illionis has said, we are endeavoring to get a uniform staute, if it is possible, that will at least to some extent meet some of the evils of divorce; that is the purpose for which we are gathered here. Everybody must have that disinterested object in view. There are fifteen separate propositions embodied in this report, some of them are bound to occasion discussion and differences of opinion. I ask, therefore, the gentlemen of this Congress and the lady delegates, when they are satisfied that the sense of the Congress has been thoroughly made known in debate, not to bring up, by the introduction of amendments, subjects of that character; and I ask that the debate on this particular amendment be closed, that we may proceed in the regular order.

The PRESIDENT: The question has been called for. The Secretary will read the question.

The question being on the adoption of the amendment to resolution 3, the Secretary called the roll of the states, and reported 5 states voting aye, and 28 states no; whereupon the President declared the amendment lost.

VICE-CHANCELLOR EMERY, New Jersey: I rise to suggest an amendment which is absolutely necessary unless we are to rescind part of our action on resolution 1, passed yesterday as to domicile. This resolution, as it stands now, is based on the theory of the resolutions before the committee, that there was jurisdiction only in the residence of the plaintiff. It reads, "Not less than two years residence should be required on the part of a plaintiff who has changed his or her state domicile since the cause of divorce arose." I move the amendment of that resolution by beginning with the words, "Where residence of the plaintiff is required." Otherwise, this would contradict our action of yesterday, that there would be jurisdiction by reason of the residence of the defendant.

WALTER GEORGE SMITH, Pennsylvania: I accept the amendment.

The PRESIDENT: The Committee on Resolutions accept the amendment.

OTTO J. KRAEMER, Oregon: I desire to offer an amendment, and I appreciate the value of the time of this Congress in so doing. But it seems to me of the utmost importance that we consider this amendment, and I therefore move to amend by inserting "one year" instead of "two years" in the resolution.

B. F. MEIGHEN, West Virginia: I second that motion.

The PRESIDENT: The amendment is seconded, and the question comes up on the amendment.

WALTER GEORGE SMITH, Pennsylvania: I would like to say to the Congress before it votes upon this matter of amendment that two years was reported by the committee after full discussion before fifteen delegates from this Congress. Two years is the rule which they thought would meet the average sentiment of the country. If the debate in the Committee on Resolutions on a subject of that kind, which, of course, is one which each state will decide for itself, with the recommendation of this Congress—if a question of that sort is to be transferred for discussion, from the Committee on Resolutions to this floor, I apprehend that we will make very little progress; and in the line of my previous remarks, I hope there will not be an extended debate on this subject.

OTTO J. KRAEMER, Oregon: There is no person present who appreciates more than I do the valuable work done by the Pennsylvania delegation in giving us a foundation upon which to work. As has just been stated, this matter was discussed by the Committee on Resolutions. The original resolution recommended a three year limitation. I objected to it in the committee, and it was there reduced to two years; and unless I felt that it was of great importance to reduce it to one year, I would not now take up your time, and I will be very brief. In the first place, we desire uniform legislation. Let us look at the sentiment of the different states. Although I have examined only forty states relative to the residence required, twenty-seven out of the forty have but a one year limitation, five more have a six months limitation, making thirty-two out of the forty states, with a limitation of one year or less; five others have a two year limitation and two of them a three year limitation. Now that shows the general sentiment of the United States in this respect. Not only that; but the American Bar Association (and although we may not desire to give them credit for as much sense as we have, still it is an able body)—the American Bar Association recommended one year. I might say the same of the delegates to the Convention for Uniform Legislation. They were an able body of men, though not as able as we are; they recommended one year. The Inter-Church Conference—and that was surely a conservative body—recommended one year. Now, practically all the states were represented in the American Bar Association, the Uniform Congress, the Inter-Church Conference, and they recommended one year. Why change it to two years? Can they give the states a reason why they should not adopt the law that they recommended?

Let us look at the reason for putting in any limitation whatsoever. Every state in the Union requires some residence. Why

does it do so? Simply because the causes for divorce are so varying, and it is done to prevent migratory divorces. That is the only reason. When the gentlemen who called this Congress to order asked for this Congress they surely were optimistic enough to think that we could frame a law that would meet the approval of the legislatures of most of the states; and we surely would not be doing the work we are now doing, if we did not believe so. Such being the case, feeling what success we have had with the negotiable instruments act, as an example, we have the right to believe that in ten or fifteen years thirty of the states of this Union will adopt the law we shall recommend. If that is the case, you would not require any residence whatsoever to prevent migratory divorces, if it were not for the one thing, and that is that two people might live in a certain state, and the one party abuse the other, in order to prevent one of those parties from going to, say, Oregon or California, and there instituting a divorce suit, and compelling the other party to go across the continent to defend it. Now, I do say that, if you are going to have uniform legislation, this is not a very important matter. Do not try to get every state to change its laws to two years instead of one, in view of the resolution you have just adopted, whereby the states will not recognize as a ground for divorce any cause occurring in another state, which is not a cause for divorce in the state whence the party came. Do not make this change. Do not make any more changes than absolutely necessary; and I think that in view of the want of sentiment of the whole country, you should put it at one year and leave it there.

F. H. BUSBEE, North Carolina: I dissent most heartily from the statement of the chairman of the Committee on Resolutions that there should not be an opportunity given to the members of this Congress for the fullest discussion. It will be remembered that the committee of seventeen was unanimously voted upon the promise and distinct statement that all states not represented in that committee should have an opportunity to be heard upon the floor of the Congress. And so I dissent most heartily and strenuously from the suggestion of the chairman of the Committee on Resolutions that, because of their deliberations, there should not be an opportunity given for the fullest discussion. The whole evening has not been spent by the Congress in deliberations; and if it is necessary for us to go home before the deliberations are ended, we had better have evening sessions, and devote the entire time to the consideration of the questions, rather than to have the feeling exist in the mind of a single delegate that an opportunity has not been given upon the floor of the Congress for the broadest and fullest discussion of the subject.

I earnestly hope, Mr. Chairman, that this amendment will be voted down. If we are called upon to put the standard backward; if we are called upon to consider the evils of the divorce laws—and it has been stated that the evils arose because they are not sufficiently open and that the divorce laws are to be restricted in the country at large—is it not to be deplored that the laws are too lax? And we are called upon now to place the standard up in a great many states. North Carolina has two years, in other states it may be three years; but according to this amendment, we are called upon to put backward the standard, which we are brought here to advance, and to turn back the tide which for the last few years has been steadily flowing towards a purer home.

Again, it is not the evils of a migratory divorce alone that are to be considered; it is the evil of a hasty divorce. And that applies to the citizens of every state, and no question of migration arises. The injured wife can be protected by an immediate divorce from bed and board; the injured wife is in no danger of suffering from the intolerable cruelty, the habitual drunkenness, or what not, of her husband. She can have a separation from bed and board. She can have the strong aegis of the law to protect her in her relations, her property and her children. But let us give them time for reason; let us give the erring husband or erring wife a chance to reflect. Let us, therefore, put our condemnation upon hasty divorces, just as much as we do upon migratory divorces; and for God's sake do not let us put the standard backward.

The PRESIDENT: I understand that what was said by the gentleman from Pennsylvania was in the nature of request only; and as such it was entirely proper. The termination of discussion rests with the Chair, under the authority of the resolution you have adopted, and there will be the fullest opportunity given for proper discussion.

MILTON G. URNER, Maryland: I do not intend to take up any great length of time. I simply want to correct what I think is a misapprehension on the part of the gentleman from Oregon. He has stated that the American Bar Association and the Conference on Uniform Legislation recommended one year. I hold in my hand the resolution of those bodies, and it is endorsed also by the Inter-Church Conference: "No person shall be entitled to a divorce for any cause arising out of this state, unless the complainant or defendant shall have resided in this state for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home."

VICE-CHANCELLOR EMERY, New Jersey: Just a moment, in order to express my appreciation on the way in which the question

has been presented by the delegate from North Carolina, and especially on the question of the effect upon the states of the reduction of the term of residence to two years. I only rise to give the Congress the record in my own personal experience in regard to migratory divorces. Of eight hundred divorces, only seventy-two were granted in cases that would be applicable to the migratory clause; so that nine-tenths of all the divorces in the State of New Jersey, which is between the two States of New York and Pennsylvania, representing the two systems, would probably represent the average condition in the Eastern States. Nine-tenths of them are domestic. And it would be impossible, in the State of New Jersey, to reduce this below the term of two years. They have gradually come down from seven, to five, to three, to two. Two years is the limit; and, therefore, much as you may desire this change, it can only be acquired at the expense of the domestic peace of the State.

Calls for the question.

The PRESIDENT: The question is called for. The amendment substitutes one year for two years. The Secretary will call the roll.

The question being on the adoption of the amendment to the resolution substituting one year for two years, the Secretary after calling the roll, reported 6 states voting aye, and 27 voting no; whereupon the President declared the amendment lost.

The PRESIDENT: Are you ready for the question on the resolution as reported. The Secretary will read the resolution.

The Secretary read as follows:

"3. Where jurisdiction for absolute divorce depends upon the residence of the plaintiff, not less than two years residence should be required on the part of the plaintiff who has changed his or her state domicile since the cause of divorce arose."

And, after calling the roll of the states, reported that 30 states voted aye, and 2 states no; whereupon the President declared resolution 3 adopted.

The PRESIDENT: The Secretary will read the next resolution.

The Secretary thereupon read the resolution, as follows:

4. An innocent and injured party, husband or wife, seeking a divoree, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, to apply for a divorce from bed and board. Therefore, divorces a mensa *should be retained where already existing, and provided for in states where no such right exists.*

WALTER GEORGE SMITH, Pennsylvania: Mr. President, I move the adoption of that resolution.

Duly seconded.

The PRESIDENT: It is moved and seconded that the resolution be adopted.

REV. DR. HENRY C. MINTON, New Jersey: This resolution introduces something outside of the province of divorce altogether, as a substitute for divorce; and while it is couched in harmless words, meaning only a suggestion, yet I submit, gentlemen, that coming with a moral sanction and approval of this Congress, it has the force of a recommendation; and as a member of this Congress, I am bound to hesitate before I can vote for it, unless there are explicit modifications.

Only twenty states of the Union provide for legal separation. You, gentlemen, do not need to be reminded that legal separation is something entirely distinct from divorce. It is the divorce problem with which we have been grappling. This suggests legal separation for divorce. As I say, only twenty states of the Union provide for legal separation; and I am informed by gentlemen who may know that this idea is less and less in favor in the states of the Union.

If it were suggested that this should be applied only in exceptional cases, and if it were so stated, I might be willing to vote for the resolution as it stands; but, it gives the sanction of this Congress to a principle—a principle which is entirely distinct from and alien to the principle of divorce—and I submit, whether it be not true that the status which is established by legal separation is not altogether a strained and unnatural status. And I submit whether it be not true that, if this legal separation be substituted in any large degree for divorce, then, speaking not simply for the parties directly concerned, but for the wider and broader interests of society, the last state of society would be worse than the first. I think we ought to give careful consideration to this suggestion.

Either a man is married, or he is not married. If he is married, then his status is fixed. If he is not married, then he has the right to marry again. Although it be true, as stated in the note in fine print in the original pamphlet presented to the committee, that in some states there is a penal clause putting a prohibition on re-marriage upon the guilty party to a divorce, I submit whether on academic grounds that is proper. However, in case of legal separation, I am safe in saying that the opinion of a large majority of the writers on social and sociological subjects is that it puts a premium on unchastity and immorality; and from the point of view of social morals, and personal and private morals, I question very much whether we are warranted in even suggesting the principle of legal separation, which is something entirely distinct from the principle of divorce.

It may be said that the question of alimony, and the prohibition of re-marriage, to which I have referred, and the care of children

may be involved. Is it not true that this can be taken care of by the courts in issuing a decree of absolute divorce? I only wish to raise this question for the gentlemen of the law, desiring only to indicate my own frame of mind as being that of great timidity and hesitancy in voting for this resolution as it now stands.

WALTER GEORGE SMITH, Pennsylvania: It would be, perhaps, more in order if the representative of the Committee on Resolutions were to close the debate; but in a matter of this seriousness, I apprehend that the minds of those of the delegates who have come here without any fixed views on this subject might be influenced by such arguments as that the gentleman has just advanced to you; and I will break in upon my rule and try to submit to you the reasons why the Committee on Resolutions unanimously recommends the adoption of this resolution.

First, let me remind you, gentlemen, of the character of the men who make up the Committee on Resolutions. I do not mean their personal character; I mean what they stand for; what they represent. They are chosen from all sections of the country; fifteen of them were present, and this matter was very fully presented to them.

Now, the gentleman objects to this resolution because it will have the effect of giving the moral approval of this Congress to legal separations, which he says do not disturb the marriage status, and which leave two people in the bosom of society who are legally married, yet not married; and that such are the limitations of our poor fallen nature that there is danger that they will be added to the vicious element of society. That is frankly what he states; and he says that, on sociological grounds, we are bound to consider, bearing in mind the limitation of our common nature, that this will be a dangerous thing to do. And then he adds that we are brought here to consider the evils of divorce, and that a divorce *a mensa* is not a divorce, and therefore is not germane to the consideration of the matter here.

Those, if I apprehend him right, are some of his arguments; and he appeals to us upon a doctrine, which I for one look upon as a very philosophical doctrine, a very proper doctrine, and which I hope this Congress will bear in mind; and that is the doctrine of authority. I hope that whatever may be the differences of opinion upon the important subjects before us here, that no delegate will go away from this Congress with any feeling in his mind that the Pennsylvania delegation, to begin with, and the Committee on Resolutions, following, desire to approach the consideration of any one of these subjects in any other than a spirit of the utmost candor, and in a spirit of the utmost frankness, subordinating, as far as it is possi-

ble—excepting when it comes to a matter of principle—subordinating, as far as possible, any individual views.

The Right Reverend Bishop, the delegate from one of the Dakotas, won your admiration yesterday, when he stated that for his part he believed in no divorce for any cause. That was his personal view. Mr. President, Gentlemen of the Congress, that is my view; that is my personal view; and you can take it for what it is worth. I am not egotistical enough to try to thrust my views upon you, except as matter of argument. I recognize fully the vast difference of opinion upon this subject. If the statistics are correct, fifty millions of the people of the United States are not members of any religious denomination. I presume a good many of them would consider themselves insulted if they were told they were not Christians; but they are not members of any special denomination.

One great Church, that to which I belong, and to whose history, antiquity and venerable authority such an eloquent tribute was paid yesterday by the distinguished lawyer from New York, Mr. Stetson, represents a very large element of the community; and from that venerable institution, with its doctrine of authority, and its absolute prohibition of divorce of any kind, to the most extreme view represented by those who, in the grotesque recommendation that was solemnly put forth before a body in Washington yesterday, went to the extent of recommending that a divorce coupon be attached to every marriage certificate, there are all phases of thought. I ask this Congress to say, by the enormous moral weight that will attach to its deliberations, that it will not forbid those, who are conscientiously opposed to any form of divorce, to obtain from the courts a legal remedy for intolerable wrong.

We recognize the fact that men and women, husband and wife, sometimes cannot live together. Alas! too frequently is that the case. And will you say that the man or woman who believes that his or her eternal salvation depends upon yielding to the authority of his or her church, shall have no legal relief? Surely, that cannot be in the mind of any justice-loving man or woman. What does this resolution say? It says that we recommend that legislation be enacted, where it is not already in effect, permitting those who hold these views to go into court, and to be relieved of the intolerable burden that has come upon them. Yet they do remain husbands, and they do remain wives.

Now, there are two writers, one of great and deserved authority, whose name you will see quoted almost always whenever a case of divorce arises and is contested, and any legal point requires interpretation. I refer to Bishop, who does undoubtedly say that there should not be permitted any divorces from bed and board. The next authority, one who has lately come before the public, is

the distinguished gentleman who represents the University of Chicago, and I presume the best thought thereof, Mr. Howard. Mr. Howard, after fourteen years of study of statistics and the works of various people upon the subject of marriage and divorce, reaches the same conclusion. Those who wish to yield to that authority will be entirely philosophical when they do so. I envy not the man or woman who has so low an idea of our human nature, who has so little opinion of the effects of centuries of civilization and of struggle in elevating our common nature, who believes that the average man and the average woman cannot rise superior to that imperious demand of nature. We know that they do. We know that there have been thousands and thousands of lives, men's and women's, that have been bound to perpetual chastity, and whose names are illustrious, and a benediction to the human race.

I say, Mr. President, that if the American community, represented in this Congress, means to say that it is impossible for men and women to live apart and not be guilty of vice, of the character that we all understand, then the American people are not the hope of the modern world, and the American ideal is not the high ideal that we would fain believe it; and we are retrograding, and not advancing. But be that as it may, I ask my friend, and I ask the most extreme advocates of the view of Bishop, in all common justice and fairness, whether they propose to shackle those whose consciences forbid them to apply for an absolute divorce, by voting down this resolution which will permit them to obtain a separation with a sanction of a court.

Bear in mind that the law says, just what the churches say, that marriage is a perpetual and monogamous relation. The law does not say that it can be set aside; the law does not say it can be dissolved. The law says that this shall be a perpetual status. When the marriage contract is once executed, it changes the status of the parties thereto, and they become different people in the eye of the law. But it recognizes the fact that there are conditions such that it must make exceptions; and when the divorce suit is brought, I beg to remind the members of the bar who are here—for it is an elementary proposition, and I venture to say to those who perhaps have not considered it—that there are more than two parties to this divorce procedure. There is the plaintiff, sometimes called the complainant; there is the defendant, sometimes called the respondent; and standing over them is the State which is the community, which represents you.

Now, shall the State be made to say that you must either dissolve this status—

The PRESIDENT: I would call the gentlemen's attention to the fact that he has exhausted his time.

J. R. THORNTON, Louisiana: I ask unanimous consent that the time of the gentleman from Pennsylvania be extended.

The PRESIDENT: Is there any objection? As there is no objection, the gentleman may proceed.

WALTER GEORGE SMITH, Pennsylvania: I simply was stating that you, the community, are the third party; and I say that, unless limited divorce be permitted in the different states, to those whose consciences believe that there can be no divorce *a vinculo matrimonii* then this intolerable relation must be continued. Is it fair? Is it just? Is it statesmanlike?

Now, mark the objection. We will assume, for the purpose of discussion, that here is an injured wife, whose husband has been guilty, not once, but repeatedly, of the major offense, which is the only cause for absolute divorce in the State of New York, as one of the delegates yesterday described the condition of one whom perhaps she had known under certain circumstances. Now, that person desires to get relief, but her conscience tells her that she cannot be separated from that husband so as to give him freedom. Therefore she makes her allegation, and says, "I have the same right for this great cause, and I file my application for divorce *a mensa*." That man, it is true, is held by his obligation to her, and he never can legally marry. The wife has her option; if her conscience permits her, she can seek for absolute divorce; or if not, she can sue for this limited separation. Well, my friends, is that unjust? Is that unfair, in view of the penalties that are attached in the State of New York, in one particular case, and in many of the other states, as far as my recollection tells me? The law has already given its sanction to that additional and life-long penalty upon the erring party, either husband or wife. If we are to preserve the purity of our homes, or restore the purity of our homes—because this great tide, as the President described to you in his opening address, has reached greater proportions in this country than in any other country excepting Japan, and the statistics show that in a given period of time more divorces have been granted in the United States than in all Europe—we must surround this matter with all the safeguards and limitations we can, and here is one that will relieve the evil immeasurably.

You have been very patient with me, and I appreciate it very much. I regret exceedingly that I should have been so discursive in my remarks; but I appeal to you, with the full force of the Committee on Resolutions unanimously at my back—and I do not believe that any member of that Committee holds identically the same views that I do personally—not to strike out this resolution, and not to amend it.

REV. HENRY C. MINTON, New Jersey: I ask the privilege of

making a personal statement. I feel it due to the President, and the members of the Congress, to say that if in my remarks I injected or displayed in any way a sectarian, ecclesiastical or denominational bias or prejudice, I stand willing and ready to make apology. I am a citizen of the State of New Jersey, requested by her Governor to come here, and this is the first time my voice was heard, and I am sure the gentleman whose time was extended by common consent will not misconstrue my remarks.

VICE-CHANCELLOR EMERY, New Jersey: I rise to a personal statement. As a member of the Committee on Resolutions, I feel it is my duty to rise now to say that, on a question of this character, pertinent features may be discussed here that were never considered by the Committee on Resolutions in a meeting of three hours, which was the time we had to discuss the fifteen resolutions. I beg only to say that the questions must here be considered as presented for the consideration of the Congress, and that no member, either the chairman or any member of the Committee on Resolutions, has a right to stand before this Congress, except on the merits of his resolution. So far as I am personally concerned, and as far as my memory recalls what passed in regard to this resolution, on my part, as a member of the committee, was this: we had spent some time in discussion—

The PRESIDENT: If my understanding is correct, the gentleman is just about to do what he complained the chairman of the committee has done.

VICE-CHANCELLOR EMERY, New Jersey: Not at all; I am only explaining why the chairman is not entitled to refer to the unanimous action of the Committee on Resolutions.

The PRESIDENT: I think that may be conceded.

J. R. THORNTON, Louisiana: I merely wish to say that if there was any doubt in the mind of any member of this Congress as to the advisability of the passage of that resolution, outside of the gentleman who opposed it, I sincerely trust that all such doubt has been removed by the argument that was addressed to us by the chairman of the Committee on Resolutions, the gentleman from Pennsylvania—an argument replete, as it was, with eloquence, with logic, and with pathos; and I, who say this, am not a member of the ancient and historic Church of Rome with which he is associated, but am a Protestant Christian with religious convictions as sincere and intense as his own can possibly be. (Applause.)

REV. CAROLINE BARTLETT CRANE, Michigan: I am in favor of this resolution, provided it is understood that a limited divorce is a matter within the option of the injured party.

The PRESIDENT. So it is.

REV. CAROLINE BARTLETT CRANE, Michigan: I so understand the resolution, and with that understanding, I am in favor of it. First, because such a separation will give the parties time for reconciliation. And, second, because it would allow for a reform on the part of the offending party, and prevent his yielding to a greater temptation, and make it possible for the innocent party to resume the bonds of matrimony. Also, for the sake of the consciences of those who do not believe in absolute divorce, under any circumstances. Also, I am in favor of the resolution because it would be a decided protection to the innocent party. We have all, doubtless, in our own experience, known of cases in which the offending party would, by his or her conduct, deliberately drive the spouse to seek a divorce in order that he might be at liberty to form another relation.

Notwithstanding this, I wish to assert upon the floor of this Congress that, in the discussion of this question, as of other questions, the matter of "authority" has been pressed upon our attention with too great eagerness and insistence. First, the authority of this Committee. I did not object, on coming here, to see the pre-arranged character of the programme and the selection of the committees. I grant that this may be, and probably is, necessary in order to facilitate business and give us something on which we can immediately go to work. But I do submit that this Congress is entitled to free and full discussion on any subject that may come before it; that neither you nor I nor any of the delegates are here for the purpose of echoing the opinions of the Pennsylvania delegation or of the Committee on Resolutions; and that we have been very distinctly given to understand by the chairman of this Committee that this is virtually our duty. I thank the President of this Congress for having assured us that every one shall have a full and free opportunity of expressing his or her opinion. It is better that we should have evening sessions; it is better that we should continue this convention into the next month, than that we shall go away feeling that any member of this convention has been prevented from expressing his or her full convictions.

Now, with regard to another species of "authority" which has been urged here; that is, the authority of the Church. I maintain that every church has a full right to discipline its own members in accordance to its own standards with regard to the matter of divorce. But I also maintain that no church, however ancient or honorable, has any right whatever to seek to dictate to us, who come here as the representatives of various civil organizations. It is decidedly aside from the spirit and intention of this Congress that such urgency should be given to church views in our deliberations. I have opinions which probably would differ from the religious con-

victions of many other people; but I do not come here to represent my personal bias in the matter of religion, or my church connections.

Now, it has been stated upon this floor, repeatedly, that the great Mother Church, the Catholic Church, does not believe in and does not permit divorce for any cause whatever. I wish to call the attention of this Congress to the fact that there is an error in this statement. The Catholic Church does grant divorce, and does grant absolute divorce, with privilege of re-marriage. In what case? In this case: Provided two parties are neither of them believers in that faith, and one of these parties become a convert to the Roman Catholic faith, and the other spouse, who is not a believer, does not live with the converted spouse "*sine contumelia creatoris*"—without reviling the Creator.

F. H. BUSBEE, North Carolina: Mr. President, I shall have to rise, with great respect, to a point of order. If we get into theological discussions, our sessions will be endless.

The PRESIDENT: I think the discussion is taking rather a wide scope, and it would be well for the delegate to confine her thought to the topic before us.

REV. CAROLINE BARTLETT CRANE, Michigan: I simply wish to correct a statement which has been made, and I think that the correction should be stated. However, I do not want to press that point, but only to say this: that when the argument is made against re-marriage, I cannot see why the privilege of re-marriage ought to be granted for "contumeliousness toward the Creator" any more than for any other reason; except that it is in the interest of the church to do so. The principle I am speaking for is simply this: That we, as representatives of civil bodies, should apply, for our protection, the same rule which the great Roman Catholic Church, a church which I profoundly respect, applies to its communicants; in other words, that we act in our own interests, as the church in its interests.

For it is our business to speak in the interests of society. The Catholic Church does not recognize marriage as a sacrament, unless the rite is performed under the auspices of that church. But is there not a sacredness to marriage, which we all recognize in common? If there were no hereafter, and no future life, still it is better to be chaste than impure. If there be no Heaven beyond, still there is that Heaven here on earth, which dwells in the home where there is love and faithfulness and long-suffering patience. But I say that patience may cease to be a virtue in the marriage relation, as in other relations. And when the occasion does arise where patience ceases to be a virtue, and questions of divorce come, it is for

society to decide such questions, not upon any church basis, but upon a sociological basis, keeping in mind the relative interests, first of the individual; second, of the children (whose rights are paramount); and, lastly, the rights of society at large.

Now, certainly there should be the right of limited divorce in any case where the plaintiff desires it; but it should not be the only redress in most cases, as in the State of New York, where absolute divorce is granted on one only ground of adultery.

But it has been assumed upon this floor that the only possible reason for wishing an absolute divorce is for the purpose of re-marriage. Suppose the case of a wife, whose husband has committed an act which sends him to the State's prison for life—justice and human dignity demand a release for the innocent party from the marriage bond.

The PRESIDENT: I will have to remind the speaker that her time has been used.

REV. CAROLINE BARTLETT CRANE, Michigan: I ask the same privilege which was granted to the last speaker.

The PRESIDENT: Is there any objection to the delegate proceeding? As I understand there is no objection, the delegate may proceed.

REV. CAROLINE BARTLETT CRANE, Michigan: I wish to say that it is an abnormal, an anomalous position occupied by persons who are the subjects of a limited divorce; they are neither married nor unmarried; and the woman especially is the object of scandal. She cannot enjoy the companionship and protection of her husband, nor can she have a man friend without causing harsh criticism. This position is anomalous; and it is not right to say there can be no desire for absolute divorce, except for the purpose of re-marriage.

But further, I will say this—though I be the only one upon this floor to say it: Why should not the innocent party to a divorce proceeding marry again, if he or she chooses so to do, after a reasonable length of time? Why is it that we must heap upon these people not only the result of their own innocent mistakes in the selection of a partner for life, but forever condemn them as if they were criminals, and say they shall never form any other alliance? I do not usually favor re-marriage of divorced persons; I have often counselled against it; but yet I do maintain that we have no right to seek by law to prevent an innocent man or woman from forming an honorable alliance in the future. Why is that considered so dishonorable in the case of a second marriage, which is entirely honorable in case of a first? What are the considerations which make a

first union one of love, and a second union but an affair of lust? I say it is an insult to womanhood, and a slur upon manhood; and, out of a happy married life, I protest, with my utmost power, against this immolation of my wronged and suffering sister upon the altar of a doctrine which the church does not hesitate to violate when its own interest demands.

I will close with just this observation: That when men and women get into the divorce courts, despite the clause in the marriage ceremony which says, "Whom God hath joined together, let no man put asunder," there is afforded a pretty strong presumption that God did not join them together.

JUDGE STINESS, Rhode Island: The purpose of this section seems to have been lost sight of. It is a section which is entirely in favor of the woman. Its origin was in the time when woman had no power to contract or to manage her own property, or even take care of herself. If her husband did not provide for her, she was helpless. She could not start a store. She could not make a contract. She could not even hold her own property, or collect her own dividends. Her hands were tied. But in a divorce of this kind she had the privilege of attending to her own affairs. That provision has become of very little consequence nowadays, because nearly all the states have given to married women the full right over their own property. Still there may be states where there are still such difficulties, and for that reason, if for no other, it is well to preserve this section, because it applies only to the wife. If she does not want it, she need not ask for it. If she does ask for it, and afterwards wants to file a petition for absolute divorce, she can do so, and it is no hardship upon the wife, in any event.

I want to say just one word more. It was my lot for about thirty years to sit upon the bench of the Supreme Court of Rhode Island, and in that way I saw a great deal of divorce cases. I did not try as many as some of the others, because it so happened that when my turn came many of them were not ready. But at the same time I have noticed this: before our married women's property laws were passed, there were numerous cases of divorce *a mensa*; since then there has been a great falling off in the number of divorces of this kind. I do not think there have been one in a hundred of petitions for a divorce a mensa, and I do not think there will be.

This resolution saves in certain cases rights to a woman, and in any case it can do no harm. It certainly ought to be preserved, and the state, at any rate, ought to hold out to those who want it the right simply of a legal separation, with the maintenance of the union, if they desire.

PROF. GEORGE E. GARDNER, Massachusetts: I am not a member of the Committee on Resolutions, but the impression that the

chairman of that Committee has made upon the lady from Michigan is entirely different from that made upon me; and it seems to me that the point of view of this Committee is entirely natural and proper. They have in no sense transgressed the bounds of courtesy through what the chairman has said. When a committee of seventeen, representing the different sections of the country, have come to a unanimous agreement, I submit, gentlemen, that while that should not check freedom of discussion, it should have a certain effect upon its length.

Furthermore, I think that the position of the chairman of that Committee in reference to his particular church was certainly misunderstood. If I understood his argument it was simply this—that in determining whether or not this resolution should be adopted, we should give fair consideration to the religious views of our Roman Catholic fellow citizens; and he did not go beyond that.

I have one further remark to make. In my judgment, if you have a reasonable list of grounds for divorce, the offending party, if guilty, has proved himself absolutely unfit for a resumption of the martial relationship; and if the injured spouse sees fit to leave him in a condition in which he cannot, as a result of his own wrongdoing, resume the martial relationship, it is to be a matter of congratulation.

W. O. HART, Louisiana: I simpy rise to offer an amendment. As the resolution now reads, in connection with the other resolutions that have been adopted, the right to sue for this separation would only arise after two years residence. I am satisfied that that was not the intention of the committee. I therefore move to amend by inserting, after the word "option," the words "at any time."

WALTER GEORGE SMITH, Pennsylvania: That amendment is accepted on behalf of the Committee on Resolutions.

The PRESIDENT: There being no objection, the amendment will be accepted.

TALCOTT H. RUSSELL, Connecticut: I am not a member of the Roman Catholic Church, but it seems to me that we should provide a remedy in a case like this. As I understand the position of the Roman Catholic Church on that question, the Catholic woman who seeks a divorce *a vinculo* runs danger of losing her soul. Now, if you do not provide a remedy such as the one here suggested, you put her in the position of either being compelled to risk her own soul's salvation, or else to endure a degrading relation. And it does seem to me that it is unfair to leave so large a portion of our population in that position. For that reason, I submit that there should not be the slightest doubt about the passage of this resolution allowing a legal separation.

SENECA N. TAYLOR, Missouri: I stand in favor of this resolution, and if there was no other ground or reason which I could give for standing in favor of it, I would stand in favor of it because there are godly women in the Catholic Church, who believe it would be a sin against God to have an absolute divorce; good, pure and noble women; and I thank God that the Catholic Church does take the high ground it does in regard to divorce. I only wish that all of us could measure up somewhat to the standard of that Church on this subject. The Episcopal Church is measuring up very rapidly to that standard, and I am glad of it. I am glad also to state that the Church with which I am connected, the Presbyterian Church, is fast reaching the same conclusion. It is that idea that brought us all together here, to see if we could raise the standard.

I am not going to preach a sermon, but Paul said, "If meat make my brother to offend, I will eat no flesh while the world standeth, lest I make my brother to offend." The whole Christian theory is that we should not do the thing that would offend others, if we can possibly get along without it. In my own State I do not know of any divorce from bed and board that ought to be granted at all; but where there are occasions for it, I say let the party who wants it have it.

REV. DR. SAMUEL W. DIKE, Massachusetts: I simply want to call the attention of the Congress to some facts that I have gathered from having charge of the Digest of Laws of Europe with regard to this question. With regard to this term *a mensa et thoro*, that is going out of use. The idea of divorce of two kinds is an idea that seems to be rather objectionable. In Holland they have what is called "judicial separation." Perhaps some of you know that all divorces, which, in the first instance, are simply judicial separations, are convertible after five years by the court into absolute divorces. In France, the term is three years, and it is a matter which is optional. Mr. Arrian, in a Digest of the Laws, has substituted the term "judicial separation" for the term *a mensa et thoro*, which comes from ecclesiastical sources. My suggestion is whether we should cut loose from our ecclesiastical relations, and substitute the term "judicial separation," and I am going to offer that for the consideration of this Congress.

DR. FANNY LEAKE CUMMINGS, Washington: Ladies and Gentlemen, I am not going to talk very long on this subject. I realize the great necessity of a full and free discussion. I find I was criticised myself in the papers, and it came about just from lack of this —I voted yesterday against a measure that I was opposed to, when I had an amendment written out which I wanted to put up as soon as that amendment was voted down. But we did not have any fur-

ther discussion of that question; so I had no opportunity to introduce my amendment.

I feel nobody has come further than I have, and I feel that we want to discuss these questions. We are here to discuss them, and that was the purpose and object of the call. Then let us discuss them. Let there be no asking for the question until everybody has said what he or she wants to say on these matters. That is what we came here for.

Now, I want to say along the line of what Dr. Minton has said—and some of you seem to have misunderstood what that Doctor said. Nobody knows so well as the physicians some of the things that are behind these divorces. And while there were some beautiful platitudes said here in regard to the American nation, and the high standard of the American people, we have got some statistics that show us the great menace in this country, and the necessity for purer homes and purer marriages; and the Doctor has told you of the impetus given to vice by such separations. Somebody has asked if a person could not live a virtuous life—

The PRESIDENT: I think I ought to suggest to the delegate that, since she only has ten minutes, if she treats subjects other than the resolution before us, her time will be occupied, and she will not help us in the discussion of the question which is now before us, namely, as to whether there should be a divorce *a mensa*, which means a separation only.

DR. FANNY LEAKE CUMMINGS, Washington: That is the point I am talking about. The point we are discussing is whether purity underlies such separations, or impurity—whether this is a bid for immorality in this motion.

Now the gentleman has asked: Are there no people who can lead a pure life? We know that there are plenty who can; but we know also that there are a vast army that do not. We have statistics that show us that out of seven hundred and seventy thousand young men who reach the age of puberty and marriage, four hundred and fifty thousand become infected with venereal diseases before they are married. Now it is not a question—

C. LA RUE MUNSON, Pennsylvania: Mr. President, I rise to a point of order. This is a discussion of facts which we had yesterday. It is not at all germane to this subject, and I regret to say that to me, personally, it is *ad nauseam*.

The PRESIDENT: A point of order is raised, and I shall have to decide it well taken.

DR. FANNY LEAKE CUMMINGS: I will leave that subject, and I will say, in regard to whether this is a premium on vice or not,

that a Reverend gentleman told me yesterday on this floor, that when he was down in Cuba, where the Holy Roman Catholic religion prevails, he was talking to a Reverend gentleman of that Order, and that he told him he felt very sorry to say—

J. R. THORNTON, Louisiana: Mr. President, I rise to a point of order. We have had enough of that. Let us deal with the question in hand. What somebody told the delegate is not in order; it is not germane to the matter before the Congress.

DR. FANNY LEAKE CUMMINGS, Washington: I am dealing with the question in hand.

J. R. THORNTON, Louisiana: What somebody may have said down in Cuba, is certainly not in order.

DR. FANNY LEAKE CUMMINGS, Washington: If you would just let me have time to express it, I will convince you.

This gentlemen regretted the frequency of divorce in the United States, and stated that they had no divorce there, and that he regretted that so many people were living together outside of divorce, where they could not get a divorce; and he asked this gentleman if separations were any more frequent among these people who were living together and raising families than was the frequency of divorce in the United States, and he said it was not so. So that is one thing that might be said on this question, as to whether or not such separations put a premium on vice.

This resolution does not say she can have an absolute divorce. It says that she can apply for a divorce from bed and board. If she can have an absolute divorce, afterwards, I have no objection to the passage of this resolution; but it does not say that she can petition for full divorce.

The PRESIDENT: She can ask for either.

DR. FANNY LEAKE CUMMINGS, Washington: That is the point I was after. I want this matter to come up, because I see that in the following resolution, if carried, it will cut off all causes for divorce that are in this resolution if adopted. This is all I would say on this point to-day. I thank you.

VICE-CHANCELLOR EMERY, New Jersey: I rise to say a word in favor of the resolution, as a member of the Committee on Resolutions. After the discussion which we had in the committee, it was approved; and my personal opinion is in favor of the passage of this resolution. In urging that, I can only speak from a small range of personal experience in the State of New Jersey. Take, for instance, a single case, and note the choice on behalf of the plaintiff between an absolute divorce and a divorce *a mensa*. In New Jersey, for in-

stance, for cruelty, there is a statutory provision that there may be a divorce *a mensa*; and also, by construction, the courts have held that where a husband is cruel to his wife and she leaves him, that that is a legal desertion chargeable to him; and a constructive desertion for which she may petition for absolute divorce. So to that limited extent, that practice has been in operation in the State of New Jersey for more than half a century. It has worked satisfactorily; and I say here, what I said to the Committee on Resolutions, that it is a subject that opens up a broad range outside of the narrow scope of the judge's or lawyer's practice, and which is perhaps a sociological problem. It was only the desire of Dr. Minton to bring that before this assembly, before it has finally passed on the proposition. Our experience in the State of New Jersey in that narrow sphere has been such as to indicate that it would not be an unjust provision; and for the very purpose of giving relief to those citizens of our State, who had conscientious scruples against an absolute divorce, our State passed sometime ago a law—

The PRESIDENT: I ask that careful attention be given to the gentleman from New Jersey. He always helps us in our deliberations.

VICE-CHANCELLOR EMERY, New Jersey: I thank you, Mr. President.

—I was going to say this: that the State of New Jersey passed a law to meet exactly this situation, this hard situation, that is met by this resolution. They passed a law that if any plaintiff has conscientious scruples against a divorce a vinculo, he or she might have a limited divorce. Now, that legislature voiced the sentiment of all the people of the State of New Jersey, and took a fair and strong position. But the courts felt obliged to declare that law unconstitutional because, as they said, they could not make a general law applicable, or not applicable, according to the belief of the plaintiff. Therefore, it goes out. But the principle, not only as applied in the limited scope now, but the general principle has been adopted in the State of New Jersey; and, therefore, so far as my own experience and judgment should go upon this proposition, I am glad to re-assert here what I asserted after the discussion in the meeting of the Committee on Resolutions, that I am heartily in favor of the resolution.

I beg also to say one word further. There has been in no part of the proceedings of the Committee on Resolutions, or elsewhere, anything to indicate that the gentlemen from Pennsylvania, who are entitled to such great credit for the work they have performed—I say, not only the gentlemen from Pennsylvania, but also the State of Pennsylvania, and its Governor—had any disposition to force their views upon the Committee. If they had not taken this step, made

this appropriation, performed this great mass of work, we would not have been here, and we would not have gotten so far on in our work. So I can only add my word in their commendation.

Calls for the question.

The PRESIDENT: The question is called for. The Secretary will read the resolution as amended.

The Secretary thereupon read the resolution, as follows:

"4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist."

And, after calling the roll of the states, announced that 35 states voted aye, and no state no; whereupon the President declared resolution 4, as read, adopted by a unanimous vote.

The PRESIDENT: The Secretary will read the next resolution.

The Secretary thereupon read resolution 5, as follows:

5. The causes for divorce would seem to be susceptible of classification into certain groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be very greatly abated if legislation restricts the jurisdiction of the courts to the citizens of each state.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of that resolution.

Duly seconded.

The PRESIDENT: It is moved and seconded that the resolution be adopted. Are you ready for the question?

WALTER GEORGE SMITH, Pennsylvania: My friend from Missouri, Mr. Taylor, has handed me a substituted paragraph, which I will now read:

"The causes for divorce existing by legislative enactment can be classed into three groups. These causes should be restricted to offenses by one party to the marriage contract against the other of so

serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be greatly abated if migratory divorces are prohibited."

I said to my friend that I would accept this substitution; but since reading it over, I do not wish to accept it *in toto*. However, I am sure the Committee will warrant me in saying that we will accept this portion of it—turn to page 9, stop with the word "abated," and add "if migratory divorces are prohibited." The sentence would then read: "Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited."

I would invite the attention of the Congress to this fact. This is a general statement. By voting for it, the Congress would commit itself only to one substantive proposition, and that is this: That these causes should never be left to the discretion of a court, but in all cases should be clearly enumerated in the statutes. The question of causes for divorce may come up, and very probably will come up when resolution 6 is brought under consideration; and my reason for not accepting the suggestion that they would seem to be divisible into three groups is that that is a question that will come up when the next resolution is under discussion.

I take this opportunity to say that it has been suggested to me that it would be a wise thing when the next clause comes up for consideration, to pass it for the present, as it will surely call for a long discussion, and it would be well to have such discussion at the end of the consideration of the adoption of the resolutions. However, that is a matter that may be determined later. I simply want to press this thought upon the Congress, that in voting for this general statement, no delegate, or the Congress itself, commits itself to any proposition except that there should never be judicial discretion as to causes. I accept the amendment, with the exception of the last clause.

The PRESIDENT: It is very difficult for the Chair to understand what is subject and what is comment. Do I understand the chairman of the Committee on Resolutions to substitute for his own resolution another?

WALTER GEORGE SMITH, Pennsylvania: No, sir.

The PRESIDENT: Then will the chairman kindly take his own resolution and put it into the shape he wants it, and we will pass it.

WALTER GEORGE SMITH, Pennsylvania: I spoke too quickly. Technically, I was wrong. I do desire to substitute a resolution which will be the same resolution as is in print, except that the last clause is stricken out—

"If legislation restricts the jurisdiction of the courts to the citizens of each State," and insert, "if migratory divorces are prohibited."

The PRESIDENT: Is there any objection to that course being taken?

The resolution is now before the Congress as it has been printed. The Chairman of the Committee on Resolutions wants to change it as to certain language. Is there any objection to his doing it? It can only be done by general consent.

SENECA N. TAYLOR, Missouri: I move that the first paragraph or rather the first three and a half lines of the paragraph be amended. It reads: "The causes for divorce would seem to be susceptible of classification into certain groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so." I think this would be better: "The causes for divorce existing by legislative enactments may be classed into groups."

The reason I make this suggestion is, you will see that the language of the first part of this resolution is, "The causes for divorce would seem to be susceptible of classification into certain groups that would be approved by the common consent of all the communities represented in this Congress, or at least substantially so." It has to be approved by the common consent of all the communities. If you will look at the very next resolution or paragraph, you will see the classification. But the first is a simple statement, and I think it would be preferable to say that the causes for divorce may be classed into groups.

WALTER GEORGE SMITH, Pennsylvania: As Chairman of the Committee on Resolutions, I accept the amendment.

The PRESIDENT: The question is before the Congress. The Secretary will call the roll.

DEAN HUFFCUT, New York: Will the Chair please state the question to be voted upon.

The Secretary thereupon read the resolution, as amended, which is as follows:

"5. The causes for divorce existing by legislative enactment may be classed into groups that would be approved by the common consent of all the communities represented in this Congress, or at least

substantially so. These causes should be restricted to offenses by one party to the marriage contract against the other of so serious a character as to defeat the objects of the marital relation, and they should never be left to the discretion of a court, but in all cases should be clearly and specifically enumerated in the statute. Uniformity in this branch of the law is much to be desired, but the evils arising from diverse causes in the different states will be very greatly abated if migratory divorces are prohibited."

The PRESIDENT: As there appears to be no objection, the amendment is accepted.

(Calls for the question.)

The question has been called for, and the Secretary will call the roll.

The Secretary called the roll of the states, and announced that thirty-five states voted aye, and no state no; whereupon the Chair declared Resolution 5 unanimously adopted.

The PRESIDENT: The Secretary will read the next resolution as recommended by the Committee.

The Secretary thereupon read the following resolution:

6. The following causes for divorce seem to be in accordance with American legislation; but this Congress does not at present recommend any attempt at uniform legislation as to causes:

a. Ante-Nuptial Causes.

1. *Impotency.*
2. *Consanguinity and affinity, properly limited.*
3. *Former marriage.*
4. *Fraud, force or coercion.*
5. *Insanity, unknown to the other party.*

b. Post-Nuptial Causes for Divorce a v. m.

1. *Adultery.*
2. *Bigamy.*
3. *Conviction of felony.*
4. *Intolerable cruelty.*
5. ***Willful** desertion for two years.*
6. *Habitual drunkenness.*

c. Post-Nuptial Causes for Divorce a m.

1. *Adultery.*
2. *Intolerable cruelty.*
3. *Willful desertion for two years.*
4. *Hopeless insanity of husband.*
5. *Habitual drunkenness.*

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of that resolution, and would like to say a word in its behalf when my motion is seconded.

Duly seconded.

WALTER GEORGE SMITH, Pennsylvania: A number of the members of the Congress have suggested to me that it would be desirable to postpone the consideration of this subject of causes, because of its great importance, the probability being it will evoke much and long debate, and that the other resolutions might be disposed of. I was about to make that suggestion, when other gentlemen came to me and desired the other course. Therefore, I shall, on behalf of the Committee, ask that we proceed with its consideration.

I want to explain the language of this resolution. It says, "The following causes for divorce seem to be in accordance with American legislation;" and then goes on to say that this Congress does not at present recommend any attempt at uniform legislation as to causes. The question might naturally be asked, why refer to them if the Congress is not going to be called upon to act in the matter at all?

There is a clear demarcation between legislation relating to jurisdiction and to procedure, and that relating to substantive causes. There is a vast contrariety of opinion on the subject of causes, ranging, as the debate showed this morning, from no cause at all in South Carolina to a variety of causes elsewhere. The Committee felt, however, that it was their duty to lay before this Congress as clear a statement of the situation as possible, and let the Congress act or not act, as it saw proper. When it divides the causes into three groups, it does so because it is not possible to divide them into any others. There are the ante-nuptial causes for divorce, and those that cover suits for nullity. Technically, it might be said that these are not divorces at all; and in some jurisdictions are not treated as divorces. If the Congress in its wisdom sees proper to consider this section, and having considered it, thinks it wise to provide these causes, that is not a matter that goes to the substance at all. But it was the opinion of the delegates from Pennsylvania—and their views were adopted by the Committee of this Congress—that it would be more conducive to uniformity, as well as to simplicity, to united and lay before you all of the causes which result in a sundering of the marriage tie, whether that tie was voidable or whether it was not, and whether or not the ante-nuptial as well as the post-nuptial causes would be incorporated into one statute. Again, the question has been asked, why make a distinction between post-nuptial causes for divorce *a vinculo* and post-nuptial causes for divorce *a mensa*? The Committee makes no such distinction. The

Committee states that those seem to be the causes that are accepted by American legislatures.

To repeat, then, the Committee makes no recommendation on the subject of causes at all. The Committee expresses no opinion as to whether it is wise or unwise for the Congress at this time to grapple with that subject. The Committee lays before you a statement of the facts as they understand them in connection with existing legislation on the subject of causes for divorce. I hope I have made myself plain. I hope that it is understood there is no desire on the part of the Committee, as a Committee, whatever may be the individual views of the members of the Committee, to force upon this Congress any view on the subject of causes for divorce.

WALTER S. LOGAN, New York: I wish to say a word on this subject which I believe is germane to this discussion, in explanation of New York's position on the divorce question. The recommendation of the Committee on Resolutions states that the following causes for divorce seem to be in accordance with American legislation, and then among the post-nuptial causes for absolute divorce, they name one that New York recognizes, and four causes that New York does not recognize and never has recognized. To this I object, and a little later on I will move an amendment which, if adopted, will make the section entirely satisfactory to the delegates from New York State.

New York claims to be a part of the American nation. However, it claims no pre-eminence from the fact that it is first in wealth and population, and second to none in intelligence, patriotism and public and private virtue. But it does claim to stand on full equality with the other States; and we do claim that nothing can be said to be in accordance with American legislation which is contrary to the legislation of New York State.

The policy of New York State on the divorce question is a policy which she has consistently pursued for more than a hundred years. She has no citizen living now who remembers any other conditions. She has grown up and prospered under these conditions. Our people are wedded to them. Our political and social institutions are built around them. Our homes are founded on them. We have ordered our lives in accordance with them, and they are written clear and deep upon our constitution and our statute books, our creeds and our characters. We are by no means alone in the policy we have pursued. One other State, a great and prosperous State in the American Union, and substantially all the English speaking people in all the rest of the world outside of our nation, have even a stricter policy in relation to divorce than we have; and they, too, have grown and prospered under it. The people of New York and

South Carolina, and the people of England from which we came, and her colonies, are contented and happy under the institutions and laws that they have adopted, and are satisfied with the characters and achievements of the people that have grown under them.

The PRESIDENT: I thought you came from Holland—but I do not want to interrupt you.

WALTER S. LOGAN, New York: My friend from Holland is so good a Saxon that he sometimes thinks he has "out-Saxoned" us Saxons.

We have no desire to impose our political and social policies upon our neighbors who have grown prosperous under other conditions. Doubtless, their institutions and statutes and social customs are best for them. We think ours are best for us. Presumably, a self-reliant state will adopt such laws as are best for them as to the causes of divorce. We do well, we think, to disagree. It is the great virtue of our system of government that, while to all the rest of the world we are a united nation, with which no other nation is anxious to quarrel, yet as to domestic and local questions each state is master of its own destiny, and works out its own salvation, and maintains its own institutions best fitted to its conditions. New York does not say to South Carolina and West Virginia and Connecticut, "Change your statutes and your policy to suit our conditions and our ideas." It only says, "Leave our people to us."

In the State of New York nearly one-fourth of our people have embraced the Roman Catholic faith, and the Catholic believes that divorce for any causes is a sin. Half of the remainder of our people are affiliated with some one of the Protestant Churches that you heard from yesterday, and who, as you have seen, speak in no uncertain tone on this divorce question. In the present condition of popular sentiment in the State of New York, any change in the granting of divorces must be in favor of more, instead of less, strictness. The men that New York honors most, and loves most to honor, Catholic and Protestant alike, are the men who are devoted to the cause of the sacredness of the home, and most opposed to any increase in the causes for absolute divorce. One of them you visited in yon White House two days ago, and some of them you heard from yesterday. One of the men who spoke to you then is a leading clergyman of our State; two others are leaders of the New York Bar.

If the voting for our State was done altogether on Fifth Avenue and Murray Hill, or at Saratoga, or Sheepshead Bay, you might get the divorce laws relaxed; but unfortunately for that hope, our voting is done mainly on Tenth Avenue and the East side, and across the East River, and through the rural towns of the State. We have our divorce colony in the State of New York, just as you have at

Sioux City and Newport; but you can throw a stone from Fifth Avenue and hit every one of their houses. Divorces in other parts of the State are comparatively few and far between. The homes of the plain, common people of New York are as pure as the homes of any people in the world. The sin is almost altogether in society.

My colleagues and myself, who are here to-day, are here as representatives only; and we speak not simply our own feelings and opinions, but the views and opinions of the great mass of the people of the great State which we represent—the views of a million and a half or more intelligent and devout Catholics, and three million and more men and women of the Protestant faith—in a word, the views of the plain, common people of our State, as well as the leaders of thought, and the men and women whom the people know and trust. We could not bring them to change our divorce laws if we would; and we would not if we could.

We regard the American home as the foundation stone of American civilization, and no act of ours shall imperil the security of that home. You, on the prairies and plains and mountains of the great West, have had to meet your own peculiar conditions, to solve your own problems, to overcome your own difficulties. You have succeeded, by your own methods, and by your own efforts, in half a century, builded up a civilization which vies with ours of three centuries' growth. Far be it from us of the older—I would not say better—civilization, to dictate to you the policy you should pursue. You have shown yourselves to be entirely competent to work out your own salvation. But leave us to work out ours. We, too, had our forests to fell, our red Indians to fight, our land to subdue, and our homes to make. We are proud of our young sister states in the West; and we think there is possibly something in us, who are older, in which you might take a little pride. For are we not all sister states in a great family of states, living under the same flag, speaking the same tongue, and worshiping the same God?

And now, sir, I move that Resolution 6 of the Committee on Resolution be amended, by striking out therefrom all except the following: "This Congress does not at present recommend any attempt at uniform legislation as to causes for divorce."

We will join you most heartily in any efforts that may be made to safeguard procedure in divorce cases, and to secure society against fraud or frivolity in divorce matters. Please do not insist on leaving anything in resolution 6 that will make our work of less avail, and our help less effectual.

Duly seconded.

The PRESIDENT: The amendment is moved and seconded.

WALTER GEORGE SMITH, Pennsylvania: I would ask the

gentleman from New York whether he would not be content if we were to insert the word "prevailing" before the word "American," because, unquestionably, this is the prevailing American legislation; and it would then meet the criticism he has made. It would then read:

"The following causes for divorce seem to be in accordance with prevailing American legislation."

WALTER S. LOGAN, New York: I cannot accept the language offered by the Chairman of the Committee on Resolutions.

MILTON G. URNER, Maryland: I rise for the purpose of making a motion that all this section with these amendments be postponed until after the balance of the resolutions have been acted upon; and I make the motion for this reason: whether the amendment is accepted or whether the original resolution is adopted, both contemplate that there shall be no action taken by this Congress upon the subject of causes for divorce. Now, then, after we have completed our resolutions and laid down a foundation, a sort of declaration of rights, upon which a bill is to be drawn, then I suggest that it would be well for the Committee on Resolutions to take that under consideration and formulate the bill. We will have very little time to do this, unless the Committee is to have power to do it after this Congress has adjourned. If we take up so much time in the discussion of this question of causes, upon which we do not propose to act, we are simply having a moot court and discussing academic questions upon which we propose to take no real action.

Duly seconded.

F. H. BUSBEE, North Carolina: In this connection, I desire to say a great many of the delegates will leave before the close of our sessions, and I think this is by all odds the most important matter that will come before the Congress; that is, if we are to set forth any statement of our views as to the prevailing causes for divorce. It may not be a recommendation; it will not be; but from the line of discussion here, I am sure it will be so treated, or at least treated as a quasi-recommendation; and it seems to me to be the most important matter left before the Congress. It occurs to me that we had best discuss it now, while the membership is full, as it will be seen that the subsequent matters are not so important, and they will not call forth as much discussion and debate. I therefore think that, having reached this question in the regular and usual order, and being the most important matter left for us to consider, we ought not to postpone it to be considered by probably a reduced body.

CHARLES THADDEUS TERRY, New York: I rise to oppose the motion. The mover of it has said that the action which we take

upon this resolution will be a very short action at best; that the resolution simply states that we do not consider it necessary at this time to recommend any attempt at uniform legislation. Taking him at his word, it seems to me that the time is now ripe to determine this question. There are a great many of us here who see inevitably that we shall have to leave before this Conference closes. There is other work calling us away. It seems to me that much of our time has already been wasted; and I think that this is the crucial point of the question which we are here to determine. We should determine, first, whether we will discuss it at all; and, if we determine we shall discuss it, then let us discuss it, and let it be known how this Congress feels about this vital question. Either it is of the utmost importance, or it is not. We can soon determine whether this Congress considers it one or the other. Let us, therefore, have a vote on the question as to whether we shall declare our views about it now or not. If we say no, then to my mind the important work of this Congress is over; if we say yes, then we will have practically all the rest of the time to discuss this question.

SENECA N. TAYLOR, Missouri: I sincerely hope that the motion to postpone will not carry. As stated by one of the gentlemen, it is one of the most important questions we have to consider. The subsequent questions are all predicated upon what is set forth here. Take Resolution 7; it deals with the question of conviction of crime, which is one of the causes said to prevail in certain states. It deals with that, and indicates the opinion of this Congress on that subject. Now, the objection that seems to be made seems to me to be one that can be easily remedied. The Chairman of the Committee on Resolutions has already accepted an amendment. It does not show that we approve of those grounds, but we simply state that they constitute the prevailing grounds in the majority of states.

The question being on the adoption of the motion to postpone the consideration of Resolution 6, a division was called for, and the Secretary announced there were sixteen ayes and thirty-four noes; whereupon the President declared the motion lost.

WALTER GEORGE SMITH, Philadelphia: The Committee will be willing to accept the following amendment, if the gentleman from New York will accept it in place of the amendment which he has offered:

"The following causes for divorce seem to be in accordance with the legislation of most American States; but this Congress does not at present recommend any attempt at uniform legislation as to causes."

F. H. BUSBEE, North Carolina: May I ask the Chairman of the Committee on Resolutions if he will make a single amendment by

striking out the words "at present?" So long as they remain, it is a clear indication that the Congress will hereafter make a recommendation, and yet it gives a quasi-endorsement by the Congress to these causes for divorce.

WALTER GEORGE SMITH, Pennsylvania: I will accept that amendment.

The PRESIDENT: The Committee on Resolutions proposes to strike out the words "at present." Is there objection?

WALTER S. LOGAN, New York: I will accept the amendment of the gentleman from North Carolina, but not the amendment of the gentleman from Pennsylvania.

The PRESIDENT: The words "at present" will be stricken out.

CHARLES F. LIBBY, Maine: I object to the amendment.

The PRESIDENT: Very well, it cannot be done unless there is unanimous consent.

The PRESIDENT: The question now comes up on the amendment of the gentleman from New York.

WALTER GEORGE SMITH, Pennsylvania: I move my amendment as a substitute, as follows:

"The following causes for divorce seem to be in accordance with the legislation of most American states; but this Congress does not at present recommend any attempt at uniform legislation as to causes."

WALTER S. LOGAN, New York: I rise to a point of order. The gentleman's amendment is not an amendment to my amendment.

The PRESIDENT: A point of order has been raised. I sustain the point.

JOHN C. RICHBERG, Illinois: What is the point of order?

The PRESIDENT: The gentleman from New York raised the point of order that the suggestion of the Chairman of the Committee on Resolutions was not an amendment to his amendment, but was an amendment in itself. I sustain the point.

JOHN C. RICHBERG, Illinois: My object in rising is to offer a substitute.

The PRESIDENT: Very well; offer it.

JOHN C. RICHBERG, Illinois: The substitute is to strike out, in Resolution 6, after the word "legislation," the following words,

"but this Congress does not at present recommend any attempt at uniform legislation as to causes." I offer that substitute for the reason that if the resolution were adopted as it now stands, it would practically prevent this body from legislating on the question of causes.

As I understand it, we are here for the purpose of drafting a uniform bill for divorce. How can you have a uniform bill of divorce when the meat of the entire subject is the cause for divorce, and we leave this out? We find that one state is not represented here at all, because she recognizes no cause for divorce; we find another state practically opposed to our legislating upon this question simply because that state recognizes but one cause.

The PRESIDENT: The gentleman is arguing about an amendment which has not been seconded, and which is not before the Congress.

JUDGE S. C. STIMPSON, Indiana: I second the motion of the gentleman from Illinois.

The PRESIDENT: The motion has now been seconded. The gentleman from Illinois may proceed.

DEAN HUFFCUT, New York: I submit that the amendment is not a proper amendment to offer. The amendment of the gentlemen from New York is to strike out all except the words "This Congress does not at present recommend any attempt at uniform legislation as to causes." The gentleman from Illinois proposes to get a vote on the same proposition by striking out "but this Congress does not at present recommend any attempt at uniform legislation as to causes."

JOHN C. RICHBERG, Illinois: But leave in the rest of the resolution.

DEAN HUFFCUT, New York: Would it make any difference whatever which proposition we voted on for the purpose of getting the sentiment of the house? I therefore rise to a point of order, and I think that the gentleman's amendment is not germane.

JOHN C. RICHBERG, Illinois: We have two separate and distinct clauses in this resolution of the Committee. I am in favor of the first clause, and perhaps some of the other gentlemen are—at any rate, my motion had a second. I am in favor of the part that reads "The following causes for divorce seem to be in accordance with American legislation;" or, as amended by the Chairman of the Committee on Resolutions, "prevailing American legislation." I am in favor of that portion of this resolution.

The PRESIDENT: I understand that you are. I overrule the point of order.

R. T. BARTON, Virginia: As I understand the proposition submitted by the gentleman from New York, it is a substitute for the resolution as reported by the Committee, and it reads this way: "This Congress does not at present recommend any attempt at uniform legislation as to cause for divorce."

The proposition of the gentleman from Illinois is simply the negative of that substitute, which is the whole thing before the House. You cannot offer a substitute to an original substitute.

The PRESIDENT: The point of order is overruled.

JOHN C. RICHBERG, Illinois: Now, Mr. President, if we were called here for anything, we were called here to legislate on this question of causes for divorce. We have representatives in this Convention from the different states, and there are at least six causes for divorce that are uniform in three-fourths of the states of the Union. Now, when three-fourths of the states of the Union, represented here, have legislation in their states upon this question of causes, are we to go out and say that this Congress will do nothing simply because one state objected to any legislation upon this subject, great as she may be? It is not simply the states of the beautiful prairies and mountains that have liberal divorce laws; New England has as liberal a code for divorce as Illinois or Indiana. Take Rhode Island, Connecticut, Massachusetts or any of those states, and look at the statement furnished you here, and you will find the assertion made that as many as three-fourths of the states of the Union are agreed upon this question of causes for divorce. Yet we are told that because New York for a hundred years has only had one cause, and because South Carolina has never had any cause for divorce since the days of the Revolution—although South Carolina provides by statute how much money a man can lawfully leave to his concubine—we are told about the morality of South Carolina, and that we should follow that kind of morality. If New York is satisfied, let her be satisfied. We are not here to coerce her; we are not here to ask her to adopt our views—every state in free; but, in order to prevent migratory divorces, in order to prevent citizens of states like New York from going to Illinois, Indiana, Dakota and Rhode Island, which has been one of the Meccas where people from the State of New York have sought divorces, and because we desire to curb that tendency; why should we not enact a uniform bill for divorce, giving causes for divorce?

One word more, if the Congress please. I have been a member of the Commission on Uniform Laws for some time. For twelve years since 1893, I was a member of that Commission. I was chairman of the Committee on Divorce for a number of years. Mr. Eaton, one of the representatives in this Congress, was chairman of that Com-

mittee for three years. I offered in the Convention in 1897 and 1898 a sort of uniform bill for divorce, and omitted just such clauses as the one now under discussion. The Conference labored for the enactment of that bill. It was subsequently retracted and put, since 1898, in the form that you will find printed here in the address that has been delivered by the gentleman who represents the Inter-Church Conference. We labored with that matter, with the aid of the American Bar Association, and not a single state ever adopted our recommendations. The President of that Conference who, in 1899, 1900, 1901 and 1902, was chairman of the Committee on Divorce was the author of that bill, and with all the force we could bring to bear we never succeeded in having a single state adopt it, and that was only as to the method of procedure.

Now, with that experience, I submit that the people of the various states demand action on this matter; they demand something effective in a uniform bill for divorce. Compare this with what was done in the Conference on negotiable instruments. We drafted a bill on negotiable instruments which was complete, and lengthy as it was, consisting of 198 sections, over thirty states of the Union adopted that law.

The PRESIDENT: This is interesting, but not pertinent.

JOHN C. RICHBERG, Illinois: I simply desire to say that when we made a complete code the legislatures adopted it. Now, what success would we have had in the negotiable instruments matter if we had simply sought to amend a method of procedure? And gentlemen and ladies of this Congress, I venture the assertion that unless you make a complete bill and agree upon causes, such as are in accordance with the prevailing legislation of the people of the United States and even of the District of Columbia, which has a divorce code in existence similar to that of the State of Illinois, and make it uniform throughout all the states, your work will be fruitless. You will have accomplished nothing. You will scarcely be able to get a legislature to pay any attention to your recommendation. But, go forth with a complete bill, and appeal to the American people for uniform legislation, and your efforts will be successful.

I honor the Church; I believe in the Church. I believe in separation without absolute divorce, as does that great Church which was founded by St. Peter; and I disagree with that Church which had its origin in a divorce that came about when Henry VIII found he could not get the Pope of Rome to consent to his outrageous proposition; and founded upon that, I think a liberal spirit should be evinced, and I think that for proper causes divorces should be permitted and allowed.

WALTER S. LOGAN, New York: I ask the permission of the Congress to permit a gentleman from South Carolina to address you upon this subject.

The PRESIDENT: If there is no objection, we shall be glad to hear him.

ZACK McGHEE, South Carolina: Mr. President: I am not going to make any speech on this subject at all. I did not come here with any intention of taking part in the proceedings of this Congress. I do not know that I would be entitled to do so, if I should desire it. I have no credentials from my state. I have lived in South Carolina all my life, and I think I might say that I am very intimately acquainted with the Governor of South Carolina, and I think I know the reason he did not send a delegate to this Congress. I believe he was invited to do so. The reason is simply that he saw no necessity for it. Whatever legislation is recommended by this Congress, I feel quite sure that there will never be in this generation or for several generations to come, any divorce law of any kind in South Carolina. Now I do not wish to enter into any discussion whatever on that subject. I should never have made myself known in this Congress were it not for what I considered, and for what all fair-minded members of this Congress doubtless considered an improper slur upon the State which I represent.

The PRESIDENT: I think I ought to say that, so far as I have heard, South Carolina has been treated with the utmost respect here, and so far as I have seen there has been a disposition to regard her somewhat in the light of an example of merit held up to the rest of us.

ZACK McGHEE, South Carolina: I understand that, and I appreciate it. It is for that very reason that I say that I do not think that the members of this Congress are willing to stand for a statement which is not true—I mean which has been put incorrectly, of course—a statement which was made upon this floor to the effect that South Carolina has a law on its statute book providing the amount of money which a man may leave to his concubine.

JOHN C. RICHBERG, Illinois: When was it repealed?

ZACK McGHEE, South Carolina: If it was ever in existence, I have not known or heard of it, and I have lived there all my life.

JOHN C. RICHBERG, Illinois: Bishop on Marriage and Divorce quotes such a law. You will find it there. Is that not true?

ZACK McGHEE, South Carolina: It may be quoted by Bishop and I am not here to deny it. I simply deny the spirit and the

execution and force of such a law. There may have been such a law years ago. I say I do not deny that. I simply do deny that there is in force now any such law.

SENECA N. TAYLOR, Missouri: In the other states there is no limitation.

JOHN C. RICHBERG, Illinois: With all due respect to the gentleman from Missouri, not by statute.

ZACK McGHEE, South Carolina: I thank the gentleman from Missouri for settling that matter.

It is simply the state of morality in South Carolina which I bring up; and the only way to properly present that to the gentlemen here is for you to come down there and see for yourselves. I want to say in regard to the resolution which has been offered, and which has been ably discussed by the gentleman from Illinois from his standpoint, that South Carolina stands with New York upon that proposition. South Carolina has no desire whatever to force her peculiar views or her peculiar institutions, or her peculiar laws or sentiments upon any state or section of this country. She has never done that.

The PRESIDENT: Oh, yes. She did once.

ZACK McGHEE, South Carolina: And we ask the privilege of doing the same thing and not have others tell her what divorce laws she shall have. I am sure there is not a member in this Congress who wishes to do that. I simply wanted to make that statement, which the gentleman from New York so kindly asked permission for me to make.

AMASA M. EATON, Rhode Island: May I ask the gentleman a question? I would inquire whether it is true, as I was informed when I visited South Carolina some time ago, that there are people domiciled in South Carolina, who are divorced, and that they procured their divorces by going into neighboring States and living there long enough to file a petition for divorce?

ZACK McGHEE, South Carolina: In regard to that matter, I would say to the gentleman that I have lived there for thirty odd years, and I have never met, I think, more than two or three divorced persons in my life. There are a number living there, but very, very few, perhaps a dozen or two whose divorces are not recognized legally. If they have gone into another state and secured a divorce they may come back to South Carolina, and nobody is going to molest them. If they marry again their children are illegitimate, and a man who has property cannot sell it without his wife's dower,

that is the wife to whom he was married in South Carolina. I think those who are familiar with the laws of the State of South Carolina will say that that is true.

Adjourned.

Afternoon Session.

February 21, 1906.

The Congress re-convened at 2-30 o'clock P. M.

The Secretary called the meeting to order, saying: Ladies and Gentlemen: Governor Pennypacker is not able to be with us this afternoon, as he was compelled to return to Harrisburg in the performance of his official duties there. It may not be known to many of you that the special session of our legislature has just adjourned, and that Governor Pennypacker really came here at considerable personal inconvenience; but he came because he felt his presence was necessary in order to demonstrate his interest in the cause which has brought so many of you from all parts of this nation, we having had forty-one states and the District of Columbia represented in this Congress.

In accordance with the rules of order which you have adopted, Hon. Amasa M. Eaton, of Rhode Island, will preside this afternoon.

Mr. Eaton thereupon took the Chair.

REV. IRA LANDRITH, Tennessee: I move, as a substitute for the first four lines in Resolution 6, and as a substitute likewise for all pending amendments, the following language:

"While the following causes for divorce seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes shall be recognized in any state, and in those states where causes are restricted no change is called for."

I move the adoption of the substitute.

JOHN C. RICHBERG, Illinois: I accept the substitute of the gentleman from Tennessee, as it meets the views that I have proposed in the resolution. I think it meets the situation much more satisfactorily than the substitute I have proposed, and I therefore withdraw my substitute and hope the substitute offered by the gentleman from Tennessee will be accepted.

WALTER GEORGE SMITH, Pennsylvania: I am unable to say that the Committee on Resolutions accepts this because I have had no meeting of the Committee on Resolutions, but personally it would commend itself to the Chairman of the Committee.

VICE-CHANCELLOR EMERY, New Jersey: I would like to ask for information.

VICE-PRESIDENT EATON: Has the substitute been seconded?

WALTER GEORGE SMITH, Pennsylvania: I second it.

VICE-CHANCELLOR EMERY, New Jersey: Would the effect of adopting this now allow the substitute to be open for amendment? I mean, if this is now accepted on the part of the Chairman of the Committee on Resolutions, and as representing their view, would the result be to leave the whole resolution as it has been read open before the Congress for amendment?

WALTER GEORGE SMITH, Pennsylvania: Undoubtedly, sir.

VICE-CHANCELLOR EMERY, New Jersey: Very well, then.

VICE-PRESIDENT EATON: The Chair will rule on that point. The Chair rules that, it being accepted by the mover of the substitute and by the Chairman of the Committee it comes before us as an original proposition open for discussion or debate. Will the Secretary read the proposed substitute?

The Secretary read the substitute as offered by the Rev. Mr. Landrith.

VICE-PRESIDENT EATON: The question is now on the passage of this resolution in the form in which it has been read. Are you ready for the question?

REV. DR. HENRY C. MINTON, New Jersey: Mr. Chairman, I desire to offer this amendment. I am not able to adjust it to the wording of this new substitute which is now in the Secretary's hands; but if you will allow me I can indicate with sufficient clearness to the Congress and to the members what it is I have in mind. It is rather a matter of form than substance. The amendment I propose is this: that for the word "divorce" in the first line there be substituted the words "annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa*," and then in large capitals, "a. ANTE-NUPTIAL CAUSES," I propose to substitute, "CAUSES FOR THE ANNULMENT OF THE MARRIAGE CONTRACT." Then instead of the second heading, "b. POST NUPTIAL CAUSES FOR DIVORCE *a v. m.*," simply saying "CAUSES FOR DIVORCE *a v. m.*," the words "Post Nuptial" being omitted; and then under "c. POST-NUPTIAL CAUSES FOR DIVORCE *a m*," I would strike out "Post-Nuptial" and insert "LEGAL SEPARATION, or," so it will read "c. CAUSES FOR LEGAL SEPARATION, OR DIVORCE *a m.*"

VICE-PRESIDENT EATON: First of all, are these slight changes acceptable to the committee?

WALTER GEORGE SMITH, Pennsylvania: I think it would be wiser, if Dr. Minton would permit, that we consider them one at a time. I think there would be no objection to the change of language in the opening sentence, that instead of the word "divorce" the words he has suggested be inserted. It would amount to the same thing and it would perhaps be more comprehensive, and I do not think my committee would object to it; and I do not think my friend from Tennessee and the second from Illinois would object to it; I have not asked Mr. Landrith from Tennessee whether he would accept it.

REV. IRA LANDRITH, Tennessee: It would be acceptable to me.

JOHN C. RICHBERG, Illinois: And to me also.

WALTER GEORGE SMITH, Chairman, Pennsylvania: And so far as the Committee on Resolutions is concerned, I think it would be acceptable.

VICE-CHANCELLOR EMERY, New Jersey: I certainly would accept it, and will ask your indulgence for a moment, so that Dr. Minton can put it in proper shape.

The resolution was then read as follows:

"6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa*, seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for.

a. CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Former marriage.
4. Fraud, force and coercion.
5. Insanity, unknown to the other party.

b. CAUSES FOR DIVORCE *a v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of felony.
4. Intolerable cruelty.
5. Willful desertion for two years.
6. Habitual drunkenness.

c. CAUSES FOR LEGAL SEPARATION, OR DIVORCE *a m.*

1. Adultery.
2. Intolerable cruelty.
3. Willful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness."

VICE-PRESIDENT EATON: The Congress has heard the amended resolution proposed by the gentleman from New Jersey. Is the Congress ready for the question?

PRESIDENT WARREN, South Dakota: I rise for information. This says that no change is called for; does it mean that this body distinctly approves, we will say, the New York status; or does it mean that no change is urged? What is the sense of the Congress, without committing ourselves on that point?

WALTER GEORGE SMITH, Pennsylvania: I will answer the gentleman as to my understanding of it. It does approve the New York status for the community in New York, as long as the community in New York likes that status. It does not attempt to dictate to the community of New York what they shall do, or to the community of South Carolina what they shall do; each state, in accordance with the guiding thought of these resolutions, must of course be the judge, but we make this recommendation.

W. O. HART, Louisiana: I understand that the question is now on ths adoption of the entire resolution 6 as amended?

WALTER GEORGE SMITH, Pennsylvania: The committee accepts the amendment.

F. H. BUSBEE, North Carolina: I move the preamble as proposed be voted on separately.

Duly seconded.

VICE-PRESIDENT EATON: The question now is whether the Congress shall vote separately on the preamble or not.

The question being as stated by the Chair, it was agreed to.

VICE-PRESIDENT EATON: The question now recurs on the passage of the preamble alone. Shall the preamble be adopted?

Calls for the question.

The roll of the states having been called by the Secretary, he announced 29 states voting aye, and 1 state no; whereupon the Chair declared the preamble adopted as read.

WALTER GEORGE SMITH, Pennsylvania: I move that the three substitutes as suggested by the delegate from New Jersey be accepted.

The motion was duly seconded.

The Secretary again read the sub-titles a, b and c, as proposed.

VICE-PRESIDENT EATON: The question before the House is the adoption of the three sub-titles as just read, instead of the three already printed. If there is no objection they will be considered as adopted.

There being no objection, the Chair accordingly declared them adopted.

VICE-CHANCELLOR EATON: The next question for consideration is the causes for divorce stated in the resolution.

WALTER GEORGE SMITH, Pennsylvania: I move that the causes for the annulment of the marriage contract in Section "a" be those printed under "a."

"1. Impotency.

2. Consanguinity and affinity, properly limited.

3. Former marriage.

4. Fraud, force, or coercion.

5. Insanity, unknown to the other party."

Duly seconded.

F. H. BUSBEE, North Carolina: We have adopted the report of the Committee on Resolution 5, in which it is said, as the utterance of this Congress, that the causes should never be left to the discretion of the court, but in all cases should be clearly and specifically enumerated in the statutes; and that is followed by recommending section 4 under the heading "a" that fraud, force, or coercion should be a proper ground for annulment of the marriage contract. If there ever was an expression which would throw the doors wide open, which would leave it possible to annul the marriage contract upon the ground of simple fraud, this language would seem to invite it.

What sort of fraud should be the ground for the annulment of a marriage contract? A fraudulent representation of age, or, as in a Louisiana case cited, a fraud in the representation that one of the parties was a descendant of George Washington? Fraud in age? Fraud in amount of estate? Those questions of course answer themselves. But fraud which would annul any other contract on earth, fraud which would be full ground for annulment of any other contract, would not be a ground for the annulment of a marriage contract. On the other hand, take a case which might arise, which would give rise to a very serious question—fraud in the representation of previous chastity. Would even that be a ground for the annulment of a marriage contract? Hardly. There is a fraud, however, which is recognized in most of the states as a ground for annulment of the contract, namely, concealed pregnancy by another;

and yet that is something which is not specifically stated. I think it ought to be so stated, and I shall ask that it be added, if that word "fraud" is to remain in here. I would suggest, therefore, that these words be added:

"including pregnancy of wife by another, unknown to the husband."

That, of course, is a ground for the annulment of the contract. Bearing upon this question, there is a very strong and admirable case in Pennsylvania in which the court discuss, as the chairman will recall, what sorts of fraud will annul the marriage contract. The statutes of Pennsylvania, however, are not embodied in the statute laws of other States. If we distinctly say, without explanation, that we are attempting to restrict the evils of lax divorce, and say in broad language, as the utterance of this Congress, that fraud shall of itself be a cause for the annulment of the marriage contract, it seems to me that there would be a dangerous laxity right there.

Now, I think, sir, if the expression is to remain at all—"fraud, force, or coercion"—we should consider what decree of coercion. Would you annul the contract of the lady whom, I think, Tennyson speaks of as a "puppet to a father's threat, and servile to a shrewish tongue?" Would that be sufficient to annual the marriage contract? After declaring that the grounds ought to be clearly and specifically stated, we throw down the doors with absolute openness and say "fraud, force, or coercion."

Referring to No. 3 under "a" we say, "Former marriage." Nothing is more dangerous than attempted conciseness of statement. Nothing is calculated to give rise to more difficulties than to attempt to state in a word or two the cause for divorce, or any other cause, when it needs amplification.

We have stated in broad language, "Former marriage." It will be pretty hard on the widow and the widowers who seek to be remarried, without any suggestion that this means a living wife or a living husband. I apprehend that since this is to go out as the deliberate utterance of this Congress, there should be some more care taken in the statement than merely to say, "Former marriage."

"Impotency" is all right; "Consanguinity and affinity, properly limited" is all right. The next, "Former marriage," without any qualification, it seems to me, would not express what is desired, and I would suggest, "Wife or husband living." The next, "Fraud, force, or coercion," without limitation, excepting the conscience of the chancellor, when we have distinctly stated in the previous section that the causes for divorce ought to be clearly and specifically stated, hardly comes up to our own requirements. If they are to remain in this shape at all, I offer, for the consideration of the Congress, as an amendment to resolution 6, subdivision a, "3. Wife or husband

living," and as an amendment to 4, if it remains at all in that shape, which I regard as a dangerous shape, "including pregnancy of wife by another, unknown to husband."

TALCOTT H. RUSSELL, Connecticut: We are not sitting here for the purpose of constructing a law dictionary or defining terms; we are sitting here to use language in a broad way which the courts will have to construe for themselves. If we are going to sit here until all the lawyers in this body, including myself, agree on a definition of fraud or coercion which shall cover all the cases, then, O Lord, have mercy upon this audience! for we shall not get through for a month. There is no use in this body—a body partly lawyers and partly laymen—attempting to define the limits of the doctrine of fraud or the doctrine of coercion. We leave these causes to the discretion of the various courts, and the courts themselves must construe the language as they see fit; it is absolutely hopeless for us to attempt to do so.

EDWARD W. FROST, Wisconsin: It seems to me this whole discussion is going very wide of the facts. This is not a divorce code, we are not recommending these causes for divorce; we are reciting that in a large number of the American states certain causes for the annulment of the marriage contract are recognized. We are not discussing a divorce code, and the question of the degree of fraud does not come in at all.

WALTER GEORGE SMITH, Pennsylvania: If I may take the Congress into my confidence—where it ought to be at all times, I hope—as to the plan that is in the minds of those of us who feel especially interested in these propositions, if this Congress should adopt these or any other propositions they will be followed by the draft of a code or statute by expert hands, embodying these suggestions, as they are understood by this Congress, in legal phraseology, and with every care to observe those very proper limitations that the gentleman from North Carolina has submitted. It is impossible for me to forcast just what the history of the next two or three days may be; but let us assume, for the purposes of discussion, that we do agree on certain broad propositions in addition to those we have already agreed upon. The statute, under which the Governor of Pennsylvania invited us to come here, authorized him to invite us to agree, if possible, on a uniform divorce law for all of the country. Now, my friend's criticism on fraud, force and coercion has great force, and his criticism on former marriage has great force, just as the criticism we heard on certain definitions of the skeleton code that has been circulated that had left out the important defence of innocence; we may discover a great many imperfections right under

our own eyes; but I appeal to you, ladies and gentlemen, whether you have had any difficulty in understanding what is meant by every word here. I think, with my friend from Connecticut, that if we are going to attempt to be technically accurate we will take entirely too much time, and that that ought not to be our object here.

R. T. BARTON, Virginia: I wish to express by agreement with the very wise criticism made by the gentleman from Connecticut. In addition, I want to call the attention of the Convention to a slight criticism that might be made to the proposed amendment as suggested by my friend from North Carolina. He has suggested that instead of "Former marriage," we should say "Wife or husband living." It has occurred to me that that might make it impossible for those already divorced to secure divorces on any grounds.

F. G. BUSBEE, North Carolina: No, because in such a case he is not a husband, or she is not a wife. But former marriage means in the past.

R. T. BARTON, Virginia: That may be true, but coming to the cause of fraud, and referring to the instance that has been cited of some one fraudulently representing that he or she was a descendant of George Washington, I think that would come under another head, rather than that of fraud.

SENECA N. TAYLOR, Missouri: I think we are getting wide of the question before us. With due deference to my friend from North Carolina, we are not approving these, we are not approving anything; we are now simply stating a historical fact, that in the majority of the states—

F. H. BUSBEE, North Carolina: May I ask if any state in the Union makes former marriage a reason for divorce?

SENECA N. TAYLOR, Missouri: I will say that a great many states have other things that we do not adopt; but we express no objection to many of them.

WALTER GEORGE SMITH, Pennsylvania: The committee proposes this: "3. Existing marriage."

VICE-PREIDENT EATON: The question is now on the adoption of the statement of the causes for annulment of the marriage contract under "a."

HENRY RIDGELEY, Delaware: I want to ask—it is for information, perhaps, as much as for anything else—whether, in that annulment schedule, there should not be included marriage under a certain age for the male and certain age for the female, not ratified by

the party under that age after arriving at such an age? I think that is provided for in Delaware, and it seems to me it ought to be included. In Delaware, in the case of a male under 18 and a female under 16 years of age, not ratifying the marriage after arriving at such age shall be a ground for annulment. The marriage has to be ratified by the parties after arriving at the ages mentioned. There ought to be, it seems to me, some age limit so as to allow them to annul the marriage, if they are married under that age limit, and they do not ratify it afterwards.

WALTER GEORGE SMITH, Pennsylvania: I would suggest that would properly come under a marriage statute.

VICE-PRESIDENT EATON: The question, then, is on the passage of the resolution as read.

"a. CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT," giving them as read by the chairman of the committee, making the change in 3 so that it will read, "Existing marriage."

F. H. BUSBEE, North Carolina: I accept that. But I proposed an amendment, "including pregnancy of wife by another, unknown to husband."

The amendment I propose was a cause of annulment of marriage which is distinctly stated in a large number of the states, as shown in the admirable compendium gotten up by the gentleman from Oregon. It comes under the term of "fraud;" but where it is not under the general term of "fraud" it is a distinct reason for the annulment of the marriage contract, as in a great many states, including my own. It is entirely immaterial whether it is put as an addition to Section 4 about fraud, or put as a separate section. I desire a vote upon that—"Pregnancy of wife by another, unknown to husband."

VICE-PRESIDENT EATON: Is that accepted by the committee?

WALTER GEORGE SMITH, Pennsylvania: I will accept it, though very reluctantly, if my friend from New Jersey backs me.

VICE-CHANCELLOR EMERY, New Jersey: I would suggest that in this connection, if that language is used, it might not be considered a fraud. I know one or two cases where the question was by which of two men the wife was pregnant. They had both had illicit connection with her, and by one of them the woman charged she was pregnant, and that man married her under that statement. He knew, of course, at the time of her illicit connection with the other man. The child was born so soon after the marriage that he at once concluded that he was not the father of the child. There was a pregnancy of the wife—

F. H. BUSBEE, North Carolina: By another unknown to the husband—

VICE-CHANCELLOR EMERY, New Jersey: Well, but in that case the marriage cannot be dissolved—for this reason: The man having himself had illicit connection with the woman, knowing that she was unchaste; and knowing, when she made the representation of his being responsible, that he might ascertain the truth of the matter. But instead of taking that course to protect himself, of waiting for marriage until a short interval disclosed whether the statement made to him by her was true, he married her on her statement, and then subsequently asked the court to do for him what he would not do for himself. Our courts, and all courts, would hold that there is no fraud on that man, and no ground to annul the marriage contract. If he does not protect himself, as he has a right to do, but comes into court, and says, "Because I made a mistake in taking the word of that woman, I want an annulment of the contract," he ought not to be granted any relief.

So, following the suggestion of the gentlemen from Wisconsin, the question is how far shall we now in this general declaration, in this statement of causes, attempt to be any more particular?

F. H. BUSBEE, North Carolina: A single question. This is not a construction of the court, but is a distinct statute in very many of the states.

VICE-CHANCELLOR EMERY, New Jersey: I am coming to that. In most states, if the husband has been innocent, it would come under the name of fraud; in many, but not all. Now I ask, have so many states made this special instance of fraud a cause of annulment that we can now say that it is recognized in a majority of the states? I do not know enough about the statutes of the different states to say. I may say that any state that allows divorce for that express cause would exclude the case I have cited.

VICE-PRESIDENT EATON: Does the Chair understand that the gentleman does not accept the amendment?

WALTER GEORGE SMITH, Pennsylvania: I do not accept the amendment, by reason of the very clear views stated by my friend, the Vice-Chancellor.

F. H. BUSBEE, North Carolina: It seems to me that annulment of the marriage on account of pregnancy by another than the husband would be the most urgent, important and absolutely basic cause that could be stated. In the absence of the delegate from Washington, I am somewhat embarrassed in a discussion of the matter, but instances are not uncommon in which radical matters

have entered into it; and with that appearing as a cause for annulment in a large number of states, when we are giving a historical summary in which causes have been expressly stated—

VICE-PRESIDENT EATON: One moment. Has the amendment been seconded? Is the motion seconded?

F. L. SIDDONS, District of Columbia: I second the amendment.

F. H. BUSBEE, North Carolina: That is a cause that is stated historically as a reason for divorce, a cause for divorce; it is stated so in a large number of states; and in order that this statement of the Committee may be historically and locally accurate, I think it should be included in the causes of annulment of the marriage contract.

F. L. SIDDONS, District of Columbia: The comparative table compiled by the delegate from Oregon says that this ground, which the gentleman from North Carolina now urges, is a cause for absolute divorce in but sixteen states. The Committee on Resolutions did not consider that it should be added as a statement, under the language originally reported, as one of the causes for annulment of a marriage contract.

C. LA RUE MUNSON, Pennsylvania: It seems to me, Mr. President, that we are widening a good deal further than we should—certainly in these resolutions if not in the code itself—the use of the word "fraud," because on the principle of *expressio unius, exclusio alterius*, if we leave out any one ground of fraud in our attempt at defining what is fraud, which would in the eyes of the proper courts be a reason for annulment of marriage, we do a grievous wrong. Therefore, as we are not making a code, certainly the words "fraud, force, and coercion" are sufficient, and if the gentleman from North Carolina is correct on principle that a wife being in that condition should give the husband a ground of divorce it is always based on the ground of fraud and nothing else. But on that subject the gentleman from the District of Columbia is wrong in his number. There are not sixteen states and territories with this cause, but there are only thirteen states. Again, on the main question, I think we ought not to enlarge these grounds of fraud beyond the mere label of the word "fraud."

VICE-PRESIDENT EATON: Will the convention bear with the Chair for a moment? We are not framing a code now, we are simply enumerating what seem to be causes named in the different states, or adopted by the different states. The question is on the adoption of the amendment of the gentleman from North Carolina.

F. H. BUSBEE, North Carolina: I have no pride of opinion about this, and I withdraw my amendment if it is clearly covered by the word "fraud."

VICE-PRESIDENT EATON: The amendment is withdrawn, and the question is now upon the adoption of the causes for annulment of the marriage contract, five in number.

1. Impotence.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force or coercion.
5. Insanity, unknown to the other party.

The Secretary will call the roll of the states upon this question.

Upon the roll of the states being called, the Secretary announced that 32 states voted aye, and none no; whereupon the Chair declared the measure adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of the second schedule, 1, 2, 3, 4, 5 and 6, as reported by the committee under "b."

Duly seconded.

W. O. HART, Louisiana: I shall offer an amendment to this sub-division "b" to change the words "Conviction of felony" to "Condemnation to an infamous punishment," and I shall, later on, when the subject is reached, move to strike out resolution 7.

The reasons that prompt me to take this action are these: It is the conviction of the crime, of the felony, and the degradation of the sentence, that it seems to me should be the cause for the divorce, and not necessarily the imprisonment. As resolution 7 reads now, the conviction is not a ground for divorce, unless it shall be followed by continuous imprisonment for two years. What is the result? In the State of Illinois, for instance, a man may be condemned to an infamous punishment, with a sentence of ten years, but under the law of that State, the indeterminate sentence law, he would be released under certain circumstances after eleven months, and might never be imprisoned again; and yet, because he was not imprisoned for two continuous years, although condemned to this infamous punishment, the right to divorce would not exist. I find it necessary to argue my objection to resolution 7 at the same time, because they are so intimately connected. As I understand it, crimes are divided into felonies and midemeanors. In sub-division b of resolution 6, the word "felony" is used, and when we come to resolution 7 the word "crime" is used. Under the statutes of the United States, most of the offenses are misdemeanors, although they are the most aggravated crimes, and the punishment may be enormous. For instance, the crime of wrecking a National Bank under the statutes of the

United States is termed a misdemeanor, although the punishment may be as much as ten years, and cannot be less than five years. Yet, under the statutes of the United States, that is termed a misdemeanor. So, with the use of the word "felony," it seems to me that is not the word which we ought to use. Notwithstanding the fact that these offenses against the United States are termed misdemeanors the punishment is an infamous punishment, because it is imprisonment in the penitentiary, and carries with it the loss of civil rights, and so forth. Resolution 7 goes on to say that not only must the imprisonment be for two continuous years, but it must be by reason of sentence in some Federal or State court or, to use the exact words of the resolution—

"Unless such conviction has been the result of trial in some one of the states of the Union or in a Federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment."

According to this, a conviction by a court martial would be excluded. Any officer of the United States Army or Navy, even in times of peace, may be tried by a court martial. For instance, Captain Carter was tried by a court martial and sentenced for five years, and he served five years in the penitentiary with the exception of a few days. Under resolution 7 as it reads, there would be no ground for divorce in that case, because such conviction would not be a conviction by a state court or a federal court. Then it says, "or in some foreign country granting a trial by jury." I do not believe that Japan, for instance, has trial by jury, and it does not seem to me that this should be limited to countries having a trial by jury. It seems to me the cause for the divorce should be the condemnation to the infamous punishment, leaving the antecedent proceedings and the subsequent proceedings entirely at large.

It is stated here that the conviction of crime should not be cause for divorce unless such conviction has been followed by a continuous imprisonment. Suppose a man was sentenced to four years, or we will say three years, and he escapes from prison before he has served two years, and then after being out five or six months, was recaptured and imprisoned again and served out his sentence. In such a case he would not have served two years continuously; and in such a case the wife would have no redress.

So it seems to me, Mr. President, that the cause for divorce should be the condemnation to infamous punishment. If a man is convicted of an infamous crime and sentenced, not necessarily imprisonment, but sentenced to it, which means punishment in the penitentiary, that that of itself should authorize the wife, or, in case that the wife be so sentenced, the husband, to obtain a divorce. So I suggest in-

stead of "Conviction of felony," it should read "Condemnation to an infamous punishment." That is the language of the Supreme Court of the United States, which has been defined to mean, as I say, imprisonment for exceeding a year.

VICE-CHANCELLOR EMERY, New Jersey: I will ask Mr. Hart to accept this suggestion, which I think will meet the very case. We are now stating what are causes for divorce in different states. In my own State a conviction or imprisonment in prison is not of itself a ground for divorce; but if a desertion has commenced before a man is imprisoned, the time counts on though it is involuntary and against his will. Now, we only want to state that in a great many of the states conviction of crime is a ground. If the word "felony" were omitted and the words were "Conviction of crime in certain cases" it seems to me that would cover everything.

W. O. HART, Louisiana: The objection I make to that is that conviction of crime might not have been followed by a sentence.

VICE-CHANCELLOR EMERY, New Jersey: Then, in that case, it would not be ground for divorce. We say conviction of crime in certain cases is a ground for divorce, we do not attempt to state them all; but we say "in certain cases."

W. O. HART, Louisiana: That is the reason I perfer the term "Condemnation to an infamous punishment," because that means imprisonment in the penitentiary exceeding one year.

VICE-CHANCELLOR EMERY, New Jersey: It seems to me the better words are "Conviction of crime in certain cases."

W. O. HART, Louisiana: I prefer my language to the language of the Vice-Chancellor.

VICE-PRESIDENT EATON: What is the language that is satisfactory to the committee?

WALTER GEORGE SMITH, Chairman, Pennsylvania: I would prefer to take the language of the Vice-Chancellor. It seems to me that that is elastic and covers all the cases referred to by the gentleman from Louisiana. I would remind my friend from Louisiana that we cannot remember too often that this is a statement of fact. We say that the following causes seem to be accepted by a majority of American states—a mere historical fact. Now, it is a historical fact, and an absolute fact, that conviction of crime in certain cases is a ground for absolute divore. Why, then, should we not put it there, and when the time comes to defining what kind of crime we will take it up and handle it?

W. O. HART, Louisiana: But the conviction of crime has nothing to do with the case, because a man may be sentenced to one minute.

WALTER GEORGE SMITH, Pennsylvania: I would not say anything about the sentence.

W. O. HART, Louisiana: The condemnation and the imprisonment, if a man is convicted, it seems to me is the thing we should consider.

VICE-PRESIDENT EATON: The Chair must call atention to the fact that, under our rules, a delegate is only allowed to speak once upon one subject, if there are others who desire to be heard.

W. O. HART, Louisiana: I had not left the floor, the floor was taken from me temporarily.

F. H. BUSBEE, North Carolina: I think there is a misunderstanding as to what is meant by "certain cases." It does not mean in a certain sort of cases, but in certain cases it would be a cause for divorce.

WALTER GEORGE SMITH, Pennsylvania: "Certain instances" might be better.

F. H. BUSBEE, North Carolina: Yes; "certain instances" would be better.

W. O. HART, Louisiana: I am willing to accept that, though I think my language is better. The use of the word "felony," I think, is a mistake.

WALTER GEORGE SMITH, Pennsylvania: If the gentleman from Louisiana accepts it, I accept it on the part of the committee.

VICE-PRESIDENT EATON: Then it will read "Conviction of crime in certain instances."

The question now is on the adoption of "b. CAUSE FOR DIVORCE *a v. m.*, 1, 2, 3, 4, 5,"—

FRANCIS TRACY TOBIN, New Mexico: Mr. Chairman and gentlemen of the convention: I stand here to-day representing 350,000 people, and before any report of this Congress can become operative there will be added to the flag of this Union another star, the forty-sixth star, which will be the State of Arizona. New Mexico has her divorce laws; she is governed by the decisions of the Supreme Court regulating the procedure in such matters. Personally, on this question I would like to place myself in a right position. My views personally are not and cannot be expected to be the views of this Congress. I myself do not believe that there is a court in

this country that can grant a divorce *a v. m.*, belonging, as I do, to a church whose history has never recognized and which does not recognize an absolute divorce, giving the right to either of the parties to re-marry while the other is living. I refer to the historic church, the Roman Catholic Church. I take the words, "Those whom God hath joined together, let no man put asunder"—

JOHN GARLAND POLLARD, Virginia: I rise to a point of order. The gentleman is not discussing the question before the Congress.

VICE-PRESIDENT EATON: The Chair understands the question to be whether the resolution shall pass declaring these as the causes for divorce *a v. m.* Does the gentleman propose to reduce the number?

FRANCIS TRACY TOBIN, New Mexico: No, sir; I am speaking about my views on that motion, and how I would vote if I had a right to vote.

SENECA N. TAYLOR, Missouri: We are not discussing whether it is expedient or inexpedient, wise or unwise that these should be causes for divorce; we simply are saying historically that these obtain. If the gentleman can say historically that they do not obtain, he will be speaking to the subject.

VICE-PRESIDENT EATON: The Chair would rule that the question is now upon the passage of the resolution as the statement of an historical fact, and that a general discussion which goes so wide as to embrace a man's whole view of the case would hardly be proper.

FRANCIS TRACY TOBIN, New Mexico: Then I would say, confining myself to the ruling of the Chair, that while I have no vote and New Mexico has no vote on the floor in this convention, that if we had a vote we would vote to secure as far as possible the adoption of the report of the Committee on Resolutions. At the same time, I must consider existing circumstances as they do exist. We were denied our right to vote, although the District of Columbia, with no legislature, was accorded such right—

JOHN GARLAND POLLARD, Virginia: I must renew my point of order.

VICE-PRESIDENT EATON: The Chair, with great reluctance, sustains the point of order, because it feels that our limit of time will not permit such discussion.

FRANCIS TRACY TOBIN, New Mexico: I am through; it was rather late for the gentleman to make any point of order, because I had taken my seat.

VICE-CHANCELLOR EMERY, New Jersey: I suggest the best wording for clause 3 would be "Conviction of crime in certain classes of cases."

VICE-PRESIDENT EATON: If there is no objection, the clause will stand as suggested by the gentleman from New Jersey.

The question is now upon the passage of the resolution as to Causes for Divorce *a v. m.*

DEAN HUFFCUT, New York: I beg that the preamble which has been adopted may be read before a vote is taken upon this section.

VICE-PRESIDENT EATON: The Secretary will read the preamble.

The Secretary read as follows:

"6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa*, seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for.

a. CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force, or coercion.
5. Insanity, unknown to the other party.

b. CAUSES FOR DIVORCE *a v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Willful desertion for two years.
6. Habitual drunkenness."

The Secretary then called the roll of the states upon the adoption of Section "b. CAUSES FOR DIVORCE *a v. m.*," and announced that 32 states voted aye, and none no; whereupon the Chair declared the section adopted.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of section "c," with the five causes as printed.

Duly seconded.

W. O. HART, Louisiana: I move to amend sub-division "c" of Resolution 6 by adding an additional line to read as follows:

"6. Becoming a fugitive from justice either before or after conviction."

Becoming a fugitive from justice may not be desertion.

JOHN C. RICHBERG, Illinois: How many states in the Union have such a provision as that?

W. O. HART, Louisiana: I have not the slightest idea.

JOHN C. RICHBERG, Illinois: If there are no states that have that we ought not to put it in here; this is an expression as to the existing laws in the states of the Union.

WALTER GEORGE SMITH, Pennsylvania: Then I make the point of order that it is not in order.

VICE-PRESIDENT EATON: We are simply reciting here what are historical facts. If the gentleman wishes to urge that one of the causes which exists as a historic fact has been omitted from the list he is in order..

W. O. HART, Louisiana: It certainly does exist in some of the states: I do not know how many of the states.

VICE-PRESIDENT EATON: Will the gentleman from Louisiana bear with the Chair? We are simply stating now what the historical facts are as to the conditions in the different states in respect to the causes for divorce.

W. O. HART, Louisiana: Is the historic fact to be determined by 45 states or 43 states or 30 states or 20 states or 19 states, or how many states?

VICE-PRESIDENT EATON: The preamble says a large number of the states.

Calls for the question.

The roll of the states on the question having been called, the Secretary announced 32 states voted aye, and none no, whereupon the Chair declared section "c" unanimously adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of the entire Resolution 6 as amended, and as it has been approved, as follows:

"6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce a mensa seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to

see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted no change is called for.

a. CAUSES FOR ANNULMENT OF THE MARRIAGE CONTRACT.

1. Impotency.
2. Consanguinity and affinity, properly limited.
3. Existing marriage.
4. Fraud, force, or coercion.
5. Insanity, unknown to the other party.

b. CAUSES FOR DIVORCE *a v. m.*

1. Adultery.
2. Bigamy.
3. Conviction of crime in certain classes of cases.
4. Intolerable cruelty.
5. Willful desertion for two years.
6. Habitual drunkenness.

c. CAUSES FOR LEGAL SEPARATION, OR DIVORCE *a m.*

1. Adultery.
2. Intolerable cruelty.
3. Willful desertion for two years.
4. Hopeless insanity of husband.
5. Habitual drunkenness.

WALTER S. LOGAN, New York: If there is no objection, I suggest that we now consider the entire resolution as adopted.

VICE-PRESIDENT EATON: Is there objection?

There was no objection, and it was declared unanimously adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I move the adoption of Resolution 7:

Conviction of crime should not be a cause unless such conviction has been followed by a continuous imprisonment for at least two years, and unless such conviction has been the result of trial in some one of the states of the Union, or in a federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

M. H. BRENNAN, North Dakota: I am satisfied that great wisdom has been brought to bear on these resolutions, and I do not speak for the purpose of raising any mere technical question; but I

want to place myself right on the record in regard to the vote on this section. I do not believe that a conviction of crime should be a ground for divorce. In fact, I do not believe in divorce at all; and although I have been in practice for the last twenty-five years in Michigan and North Dakota, I have refused to take divorces, refused to go into divorce cases unless it were for the defendant; because I believe I would thereby participate in a wrong. But if this is to work a restriction of the divorce evil, then for the purpose of assisting a good cause I am willing to compromise, with the same spirit of compromise that spread its wings over the Convention in Philadelphia on the adoption of the Federal Constitution.

JUDGE STINESS, Rhode Island: With due deference to the committee, it seems to me we ought not to adopt this. It is advice given to legislators. I can see that it serves no good purpose. Conviction of crime should not be a cause for divorce unless so and so, we say—unless what has been stated above has been the fact. We have adopted "Conviction of crime in certain classes of cases." Why not leave it there?

HENRY RIDGELEY, Delaware: I want to call attention to this one thing—if we pass that resolution as it is, I would object on the ground taken by the gentleman from Rhode Island, and also on this ground: A man might be convicted three different times for a crime, and get a year each time, and yet this recommends that that should not be ground for divorce. Now, if the conviction of a man for one crime calling for two years imprisonment would be ground, what about conviction of three crimes calling for one year each? It seems to me it would be unwise to do that. I think we had better leave that alone.

JOSEPH P. LAMSON, Vermont: I have an amendment I would like to offer:

"The defendant must be actually confined at the time the application for the divorce is made."

JUDGE STINESS, Rhode Island: I move that resolution 7 be stricken out.

Duly seconded.

WALTER GEORGE SMITH, Pennsylvania: I feel from what I have gathered in an interview with one or two of the members of the committee, that they will not oppose that motion.

C. LA RUE MUNSON, Pennsylvania: I do not rise to favor for one moment the conviction of crime as a cause for divorce. Personally, I am apposed to it. But that is not the purport of this resolution. It is in substance that if conviction of crime is a cause

in a state, it should be hedged about with certain restrictions and conditions. That is the point; and among those restrictions is that conviction should be followed by imprisonment for a certain period of time—conviction by the courts of a state or the federal court, or the courts of a country where the jury system prevails, that is, the English common law. That is, if conviction of crime should be made a cause at all it ought to be thus restricted. I would suggest a change in the language here so it would say, not that it is a proper cause, but that "if it is a cause," and then go on and state these conditions.

REV. A. J. D. HAUPT, Minnesota: Inasmuch as I understand the object of this Congress to be to define what we think should be uniform laws, and the majority of us seem to be of the opinion that conviction should not enter into this proposed code which a committee, as I understand it, has prepared and presented to the different states, it seems to me that this Congress ought to set itself on record as excluding conviction of crime as one of the probable causes for divorce. I think we would do well to take action on the motion as presented to cut out altogether this seventh resolution from our recommendation to this committee that is to come.

C. LA RUE MUNSON, Pennsylvania: Let the other motion prevail for the present. The motion is to strike out. Let that motion go first, and see what the result will be.

WALTER GEORGE SMITH, Pennsylvania: The gentleman from Rhode Island moves to strike out a section that I have moved should be adopted, and I want to simply say, after consulting with a number of the members of the convention, that I will not obstruct the passage of the motion.

VICE-PRESIDENT EATON: It strikes the Chair that inasmuch as the section has been withdrawn by the committee—

WALTER GEORGE SMITH, Pennsylvania: No. I am not authorized to withdraw it.

F. H. BUSBEE, North Carolina: I would like to ask whether it will be followed by a motion for a separate resolution? If this will be followed, as was suggested by the gentleman from Pennsylvania, by another resolution to take the place of it, that will be one thing; if it will not, this is a distinct vote in favor of making divorces more lax, because the allegation now is that in certain states conviction of crime shall be a cause for divorce. The committee says in states that make that a cause it ought to be at least two years. Therefore, a vote to strike out is a distinct vote not to instruct the state to make it at least two years. If, however, this is to be followed by another

resolution offered by the gentleman from Pennsylvania, all very good.

C. LA RUE MUNSON, Pennsylvania: I think this should read "If conviction of crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years," and so forth.

W. O. HART, Louisiana: That is the same article we have, with one or two words changed.

VICE-PRESIDENT EATON: The Chair must rule that the proposed amendment is not germane to a motion to strike out a whole clause, and therefore the motion of the gentleman from Rhode Island to expunge the whole clause is the question before the House.

R. T. BARTON, Virginia: It seems to me the motion to strike out is not in order. There is nothing in yet, and so it does not seem to me that it is in order to strike out.

VICE-PRESIDENT EATON: The Chair must adhere to its ruling.

VICE-CHANCELLOR EMERY, New Jersey: I rise to a point of order. A motion to adopt the resolution is made. It was then moved to strike out the resolution. I raise the question whether that is in order.

JOHN C. RICHBERG, Illinois: It is done every day by every legislative body in the country. They move to strike out, or move to strike out the enacting clause.

VICE-PRESIDENT EATON: The Chair rules that the motion to strike out is in order, and the question is, first, upon the adoption of the resolution offered by the gentleman from Rhode Island to strike out Resolution 7.

The roll of states being called on this question, the Secretary announced 13 states voting aye, and 16 states no; and the Chair declared the motion lost.

C. LA RUE MUNSON, Pennsylvania: I move to amend Resolution 7, so as to read as follows:

"7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years and such conviction has been the result of trial in some one of the states of the Union or in a federal court or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment."

WALTER GEORGE SMITH, Pennsylvania: I accept the amendment on behalf of the committee.

VICE-PRESIDENT EATON: The question is now on the adoption of Resolution 7, as amended.

H. C. SHERIDAN, Indiana: Many of the States of the Union have what are known as indeterminate sentence laws. If I understand the force of Resolution 7, as it is termed, it is not so much the length of time which a convict serves that gives rise to the reason for divorce, as it is the fact that he or she is convicted. Indiana has the indeterminate sentence law. In many cases of felony, after the jury convicts, the court is authorized to fix the punishment at not less than one year or more than ten years, as the case may be, a certain maximum number of years, the minimum number being one year in state's prison or in the Indiana Reformatory, as the case may be; but in every case it is a punishment for crime. In some cases, for instance, where the crimes are more serious, and where the punishment is for from one to ten years, two years is the minimum limit; so that it seems to me that the "two" in line 3 should be changed from two years to one year on that account. In the indeterminate sentence law, if the prisoner conducts himself well and behaves himself properly, a board of parole is authorized to allow him to be paroled at the end of one year, where the minimum sentence is one year; and if he behaves himself after he leaves the prison, and makes his reports as he ought to do, he is permitted to retain his freedom; and after the maximum number of years has expired he is a free man; but as a matter of fact he has not been imprisoned after the expiration of the minimum term.

So I move to amend Resolution 7 by substituting for the word "two" in line 3 the word "one."

Duly seconded.

EWARD W. FROST, Wisconsin: The Wisconsin law demands that a sentence of three years imprisonment shall be cause for divorce, and I think some other states have the same provision. It seems to me that if the gentleman from Indiana is right, some words as to an indeterminate sentence should be put in here. Otherwise we are reducing the present law, and making it an easier cause for divorce than before. Could not some words be inserted, if this motion should prevail, something like "an indeterminate sentence of one to ten years," or something of that kind?

WALTER GEORGE SMITH, Pennsylvania: Would this meet your view:

"Conviction of crime should not be a cause unless such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year," etc.

EDWARD W. FROST, Wisconsin: Yes, sir.

WALTER GEORGE SMITH, Pennsylvania: I will accept that.

VICE-PRESIDENT EATON: By unanimous consent those words will be added.

JUDGE STINESS, Rhode Island: This is advice we are giving to the legislatures; and the purpose of this section is that a man or a woman shall not be held to be the spouse of a convicted felon, and the extent to which that is carried is here set forth; that is, that there must be a conviction of felony and imprisonment.

WALTER GEORGE SMITH, Pennsylvania: The language as originally printed certainly bore that interpretation; but the amendment, I think, takes the sting out of that. As amended it now reads: "If there should be," that is, if conviction should be a cause; and so we are not offering advice in that way.

JUDGE STINESS, Rhode Island: In order to get relief, under the advice you are going to give the legislatures by this section, there must be both a conviction and imprisonment for at least two years—or under the indeterminate sentence, for one year.

Now, suppose a man is convicted of a felony, no matter how grievous, and he breaks jail when he has been confined only a short time; the woman cannot get a divorce because he has not been continuously in prison for the time specified. The whole thing, it seems to me, and as I suggested before in my motion to strike this out, is officious; we are offering officious advice that would amount to very little; and the number of cases that would arise under this clause is so small that it is not worth while to offer this advice to the legislatures, and it would take all the afternoon to determine the language which should be used, because it should be adjusted to the different conditions in the different states. I think the best way to do would be to strike it out altogether.

DEAN HUFFCUT, New York: I believe there is but one amendment pending now, that of the gentleman from Pennsylvania. I therefore move that Resolution 7 be amended by striking out all after the word "causes" in the first line, and adding the words "for absolute divorce," so that Resolution 7 will read:

"Conviction of crime should not be a cause for absolute divorce."

VICE-PRESIDENT EATON: The Chair would call attention to the fact that that language has been changed.

DEAN HUFFCUT, New York: The language has not been changed, as I understand it; but there is an amendment proposing to change it which is pending.

WALTER GEORGE SMITH, Pennsylvania: It now being, "If conviction of crime should be made a cause for divorce."

DEAN HUFFCUT, New York: That is the pending amendment, and my amendment will be voted upon before that one.

VICE-PRESIDENT EATON: The Chair understands that when the chairman speaks for his Committee, and accepts an amendment, it becomes a part of the report of the Committee.

DEAN HUFFCUT, New York: I defer to the chairman; but I cannot give up my private opinion, which is that it ought to be passed upon by the House. Do I understand that the amendment of the gentleman from Pennsylvania is the pending amendment?

VICE-PRESIDENT EATON: Yes, sir; it is.

DEAN HUFFCUT, New York: And I move this amendment—that resolution 7 shall read "Conviction of crime should not be cause for absolute divorce."

C. LA RUE MUNSON, Pennsylvania: I rise to a point of order. The motion was first to adopt resolution 7 as it appears in print, to which I offered an amendment, which the mover of the resolution accepted. Therefore, it is as though he had moved it. It is therefore the resolution before the House.

VICE-PRESIDENT EATON: The Chair would rule that that point is well taken.

DEAN HUFFCUT, New York: I would like to be heard upon that as a mere parliamentary question. When a resolution is before the House, it is the property of the House and not the property of the mover of it, and I claim it cannot be changed without the consent of the House, as a parliamentary question. I make that answer to the gentleman's point of order. It might be amended, if the House wants to amend it; but it cannot be amended by the judgment of an individual.

TALCOTT H. RUSSELL, Connecticut: Is not this the rule? That before a motion is seconded an amendment can be accepted by the mover, but after it is seconded it has passed beyond his control, and cannot be amended except by the action of the House?

F. H. BUSBEE, North Carolina: I want to ask a question on parliamentary law. If the chairman of the committee has a right to accept the amendment, as I think he has, does not that still leave it open to amendment while it is still pending, so that the gentleman from New York could put his amendment?

VICE PRESIDENT EATON: Yes, sir.

F. H. BUSBEE, North Carolina: But if, on the other hand, he has not done it, then I understand, where a motion is simply to strike out and insert, and a motion to amend is made, that then a motion to strike out a paragraph takes precedence.

DEAN HUFFCUT, New York: I am willing to accept the ruling of the Chair, in order to avoid wasting time. I move that all of Resolution 7 be stricken out except these words:

"Conviction of crime should not be a cause for absolute divorce."

Duly seconded.

Upon a call of the states, the Secretary announced that 7 states voted aye and 24 states no; whereupon the Chair declared the motion lost.

VICE-PRESIDENT EATON: The question is now on the adoption of the amendment offered by the gentleman from Pennsylvania. Will the Secretary read it?

The Secretary read as follows:

"7. If conviction for crime should be made a cause for divorce, it should be required that such conviction has been followed by a continuous imprisonment for at least two years, or in case of indeterminate sentence, one year; and that such conviction has been the result of trial in some one of the states of the Union, or in a federal court, or in some one of the countries or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment."

The Secretary proceeded to call the roll of the states, and when California was called, the chairman of that delegation stated that California voted against this amendment, because California is against the whole resolution; the roll call then proceeded, and the Secretary announced that 26 states voted aye, and 5 states no; whereupon the Chair declared resolution 7 as read adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I move the adoption of Resolution 8:

8. A decree should not be granted a. v. m. *for insanity arising after marriage.*

It is fair to say to this Congress that an act of the legislature of Pennsylvania passed in 1903 makes insanity a cause of divorce. Previous to that, there had been an act by the legislature of Florida making such a statute—

ROBERT W. WILLIAMS, Florida; I beg your pardon; that is not the law of Florida.

WALTER GEORGE SMITH, Pennsylvania: I was about to say that that statute was subsequently repealed by the Florida legislature.

The committee has expressed in a note the reasons that influenced them; and I think, notwithstanding the kind admonitions of my friend, the Vice-Chancellor of New Jersey, for which I am grateful, and which I think are appropriate, I do not think it is improper to say that the Committee on Resolutions was influenced by some such considerations when they reported this resolution to this body. It is not a matter of levity, but is a matter of the utmost seriousness and gravity. If a community of the American people deliberately says that the status of marriage shall be destroyed because one of the parties thereto is afflicted with the disease of insanity after that marriage has been contracted, I ask you to consider what that means. If there is any sacredness in that relation, surely that sacredness shows itself when self-denial is required on the part of one of the parties; and if the disease known as insanity is to be a cause for divorce it is but the opening wedge; the next cause would probably be paralysis, the next cause perhaps total blindness, the next perhaps deafness, and so on through all the ills that flesh is heir to. I know that there is a school of thought that, looking upon the marriage relation from a single point of view, would argue that this is a proper cause, and would not shrink from the legitimate conclusion that some of the other diseases I have named are proper causes; but I hope that is not the opnion of the American people. I hope that the manhood of the American people has not fallen so low that it will permit the husband to cast off his insane wife when her insanity may have come about, as not infrequently it does come about, because of her fidelity to him as a wife, and because of bearing his children. And yet, that is what this means. For these reasons, I ask this Congress to pass this resolution, that it may be an admonition to such states as still have such laws upon their statute books—including my own, I regret to say.

REV. CAROLINE BARTLETT CRANE, Michigan: I simply wish to endorse, in the strongest possible manner, the speech which has been made by the chairman of the Committee on Resolutions upon this matter of insanity. It seems to me that if we are to grant a divorce to any man or woman because of misfortune having fallen upon his spouse (the misfortune of insanity), we are doing a great injustice; and I believe, as the gentleman from Pennsylvania has stated, that that may open the door to an increasing number of misfortunes which may be used against the spouse in such cases. I believe that even where insanity might be said to be hopeless it should not be a cause for divorce; for we never know whether it is hopeless

or not. I can conceive of no more pitiful situation than that of a husband or wife coming again to his or her senses enough to appreciate his situation, and finding himself abandoned by the one who had promised to always love and cherish him, the one he expected would always cling to him. My interpretation of the words, " for better or worse" would certainly apply here, according to the misfortune or fortunes which may have fallen; and I trust that this Convention will go unanimously on record as refusing to recommend the granting of a divorce in any such case.

C. LA RUE MUNSON, Pennsylvania: I ask the indulgence of this convention for a moment. In order that you may put yourselves on record helpfully to the delegates from Pennsylvania, when they go to the next legislature to endeavor to have wiped off the blackest spot on the fair name of the Commonwealth of Pennsylvania, we ask that you will unanimously support us in this resolution. There is one underlying reason why the granting of a divorce for insanity, as a post-nuptial cause, is almost wicked; and that is this. The proper granting of divorce always lies in the fact that somebody has been at fault; and when, therefore, a divorce is granted against an insanse spouse, not for his or her wrong, but because of misfortune, as the able representative of Michigan has put it, I say then a blot is put on the statute books; and I want to be one of those who help to wipe it off.

Calls for the question.

The question being upon the adoption of resolution 8 and the roll of the states having been called, the Secretary announced that 30 states voted aye, and one state no; whereupon the Chair declared Resolution 8 adopted.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of Resolution 9:

The Secretary read as follows:

9. Desertion should not be a cause for divorce unless persisted in for a period of at least two years.

JOSEPH P. LAMSON, Vermont: I offer the following amendment: Strike out everything after the word "unless," and insert the words, "the desertion is continuous for three years." I think a willful desertion is a better cause than many of the causes which have been stated. I think if a man deserts his wife willfully, she is entitled to divorce for that willful desertion.

(The motion was not seconded.)

REV. IRA LANDRITH, Tennessee: I should like to move an amendment to the resolution as it stands. The objection to the re-

solution as it stands, it seems to me, is that it half way recommends that desertion shall be a cause for divorce, and I recommend this amendment:

"In those states where desertion is a cause for divorce it should never be recognized unless it is willful and persisted in for a period of at least two years."

JOSEPH P. LAMSON, Vermont: I accept that. I second the amendment.

M. H. BRENNAN, North Dakota: I move to amend so as to read as follows:

"Desertion should not be a cause for absolute divorce."

C. LA RUE MUNSON, Pennsylvania: Our friends from New York and North Dakota put many of the delegates of this Convention in a false position with motions like that. When we are called upon to vote yes or no as to whether desertion should be a cause of divorce *a vinculo*, those of us who are opposed to divorces *a vinculo* for such reasons as those mentioned are compelled to vote in the affirmative; because it being recognized by many states as a proper ground, we are compelled to vote for it. So, with all respect to our friends I do not think those motions are quite fair. They are not fair, because that is not the question. The question before us being one of procedure is whether we shall recognize the fact that a large number of states, and, as a matter of fact, a majority of them in this instance, do accept the ground of desertion as a proper cause for divorce *a vinculo*. That being the fact, that a large number of states do recognize such a cause, the question with us now is whether we should not put in a requirement of two or three years for a willful desertion.

M. H. BRENNAN, North Dakota: I have no desire of putting anybody in a false position, especially anybody who is assisting the cause of reform, as every gentleman on the Committee of Resolutions has assisted, and so I will withdraw my motion.

The SECRETARY: As amended and handed to the Secretary this amendment reads as follows:

"9. In those states where desertion is a cause for divorce it should never be recognized as a cause unless it is willful, and is persisted in for a period of at least two years."

The roll of the states being called, the Secretary announced that thirty-two states voted aye, and none no; whereupon the Chair declared Resolution 9 adopted.

DEAN HUFFCUT, New York: I rise to a question of personal privilege. The gentleman from Pennsylvania has just said that he

did not regard the attitude of the delegate from New York as fair in insisting that this Congress should vote whether or not conviction of crime should be a ground for divorce. I think it is a high question of privilege, as I introduced the amendment asking that that vote be taken. Is it not fair for any member of this Congress who desires to test whether this Congress believes a certain thing should be a ground for divorce, to get a vote on it if he can? In the sixth resolution were enumerated, as we were told over and over again, simply a series of historical facts, that certain things had been recognized as grounds for divorce in many of the American states, without saying that we approved of those as grounds for divorce; but, on the contrary, saying distinctly that we believe they ought to be in some respects limited. Now, in what respect? If there is any respect in which they ought to be limited, in my judgment, it is by striking out "conviction for crime;" and yet, when I offer an amendment here for the purpose of getting the sentiment of this Congress as to whether conviction of crime should be a ground for divorce, the gentleman from Pennsylvania accuses me of unfairness by requiring him to vote upon it, and other delegates in this Congress to vote upon it. In Heaven's name, what are we here for except to vote upon these questions? We were convened, as I understand, because there is a divorce evil in this country which we wish to set some limit to; and how are we going to do it if we do not express our judgment and our opinion as to what the evil is, and how it may be stemmed or pruned, and if there is any respect in which it might be pruned, that is one of them.

The gentleman from North Dakota offered a resolution, to test the temper of the Congress, to the effect that desertion should not be a cause for absolute divorce, and the gentleman from Pennsylvania accused him of unfairness in asking the Congress to vote upon that question.

As a question of personal privilege, I think I am entitled to defend myself against the imputation of unfairness in calling upon this Congress to vote as to whether in its judgment conviction for crime should properly be a cause for divorce.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of Resolution 10, which reads as follows:

10. A divorce should not be granted unless the defendant has been given full and fair opportunity, by notice brought home to him, to have his day in court, when his residence is known or can be ascertained.

Duly seconded.

And the question being taken, and the motion unanimously agreed to, the Chair declared Resolution 10 unanimously adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I now, Mr.

Chairman, have the honor to move the adoption of Resolution 11, which reads as follows:

11. Any one named as co-respondent should in all cases be given an opportunity to intervene.

Duly seconded, and the question being taken, and the motion unanimously agreed to, the Chair declared Resolution 11 unanimously adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I move the adoption of Resolution 12, as follows:

12. Hearings and trials should always be before the court and not before any delegated representative of it, and in all contested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court to enter an appearance for the defendant and actively defend the cause.

Duly seconded.

WALTER GEORGE SMITH, Pennsylvania: The thought has been growing that many evils might be abated by an open public hearing, notwithstanding the scandals that ofttimes would result and the improper details that would be made public. We have not flinched from the consideration of that matter. In some of the states—one state at least which I know of, which is ably represented on this floor—the system of references is so controlled that it is said to be free from dangers of collusion and of scandal; but it has seemed to the committee, both committees, I should say, that we ought not to flinch from all of the annoyances that the adoption of this resolution may bring about. Private hearings in gentlemen's offices, where no notice is given to the public, where nothing is known of the divorce until the decree is entered, have been an important cause of fraudulent divorces. As regards the appointment of an attorney by the court, that is the language of the statute adopted by the Congress of the United States, and which meets with the thorough approval of the representatives from the District of Columbia on this floor, as I understand it. It is also substantially the law of Indiana, and I believe of some other states. The gentlemen will observe that it is not required except in uncontested cases, and except where the court deems it necessary, for whatever reason it thinks proper; in other cases it is not required that the defendant should be represented. Those are the reasons which influenced us in recommending the adoption of this resolution as printed.

FRANCIS TRACY TOBIN, New Mexico: I am in sympathy with the first part of this resolution. I believe, as the Chairman of the Committee on Resolutions has said upon the floor of this Congress,

that all these hearings should be public. I believe if the hearing of divorce cases was in public there might be less applications for divorce. The privacy of the master's chamber very often helps or incites those who wish to be divorced to make application for that divorce to the courts in various states; but if the libellant or the plaintiff knew that he had to come into a public tribunal, appear before a court and a jury, he might be deterred; and I think it would check this terrible, this growing social curse and social evil which eventually strikes at the family, strikes at society, the State and the government.

In regard to the last part of Resolution 12, Mr. Chairman, I would say that I am not in favor of the court appointing attorneys. That, in my estimation, might open the door for collusion. It might cause in some cases an attempt between the libellant or the attorney for the libellant, or the plaintiff, and the court; in certain cases where a notice was sent that the respondents resided in a certain place when he did not reside there, and the libellant so knew it, it might result in great injustice to the respondent or the defendant, as he may be called. Therefore, I would say, while I have no vote on the question, that I would vote for the first part of this section if I had a vote; and I would vote against the last part of the section.

SENECA N. TAYLOR, Missouri: There is one amendment I would like to suggest in regard to this, and it is in the second line from the bottom; I think the words "enter an appearance for the defendant and" should be struck out. I think it should read "be assigned by the court to actively defend the cause." An entry of appearance might lead to a personal judgment, and execution against the person.

WALTER GEORGE SMITH, Pennsylvania: I will accept that on behalf of the Committee.

VICE-CHANCELLOR EMERY, New Jersey: While I think it is true, as has been stated, that many of the evils of divorce would be cured in some of the states by making the trial public, still I do not think those evils are present in the State of New Jersey to-day. The Chancellor to-day, by the rule of court in Ney Jersey, can take testimony openly in contested cases, and such testimony is taken before the Vice-Chancellors, of whom I am one. There is no subject on which we have had more frequent conferences, on which we are obliged to make more rules to prevent fraudulent and collusive divorces; but to-day in New Jersey those divorces cannot pass unless a special master has passed upon them reporting in their favor, and that special master is selected by the Chancellor himself without any power of nomination by the lawyers in the case. The Chancellor has his own list of three or four special masters in each county, to whom

he refers cases. That special master is directed to cross-examine, and represent the State; and if there is anything that indicates collusion or fraud, or if the case is defective, he is directed to report it. The special masters are usually members of the bar, of very wide experience. When they report, the cases are in turn handed to the Chancellor and each of the Vice-Chancellors, taken by each in succession, and the Chancellor or Vice-Chancellor looks over every special report, and if he does not agree with it, or if he sees anything that indicates any fraud or collusion, he may bring the parties before him in open court, and he may see, as far as it is possible for a conscientious judge in a case to see, whether they are entitled to divorce. I may say that we are on the watch for migratory divorces; for, of course, in New York desertion not being a cause for divorce, they very often come over to New Jersey, and cases of that kind are specially watched.

Now, those conditions are so peculiar that they ought not to influence the judgment, and I do not state them for the purpose of influencing the judgment of any member of this Congress. I recognize the great advantage of publicity; but, so far as the administration of our courts goes, I do not think that New Jersey needs any particular reform. Under the circumstances, I defer entirely to the other two representatives on the Committee from New Jersey, and I will give their vote in favor of the adoption of this resolution.

BENJAMIN NIELDS, Delaware: Before the vote is taken, I wish to call your attention to the word "appearance."

WALTER GEORGE SMITH, Pennsylvania: That has been stricken out.

VICE-PRESIDENT EATON: Will the Secretary read the resolution as amended?

The Secretary read as follows:

"12. Hearings and trials should always be before the court, and not before any delegated representative of it, and in all uncontested divorce cases, and in any other divorce case where the court may deem it necessary or proper, a disinterested attorney should be assigned by the court to actively defend the cause."

The question being taken upon the adoption of Resolution 12, it was unanimously agreed to; and declared by the Chair unanimously adopted.

WALTER GEORGE SMITH, Pennsylvania: I ask unanimous consent to go back to the second paragraph, to amend it in a verbal way. My attention has been called to an omision. This is under "II. As to State Legislation," and the second paragraph under this. After "it

should be insisted that relief" should be inserted the words "by absolute divorce," so that the paragraph will read:

2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

If this causes the slightest debate, I will turn from it.

REV. CAROLINE BARTLETT CRANE, Michigan: I give notice that I object.

WALTER GEORGE SMITH, Pennsylvania: I withdraw the amendment. I now turn to Resolution 13, and move its adoption, as follows:

13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent.

Duly seconded.

MILTON G. URNER, Maryland: I desire to offer an amendment,to the effect that such decree should not be granted upon testimony of the plaintiff, uncorroborated other than by the admissions of the defendant. The section reads that a decree should not be granted unless the cause is shown by affirmative proof. Now, it is perfectly competent for a plaintiff to file his bill, and then it is competent in almost all States for the plaintiff to testify himself. Then that is affirmative proof, and it is aside from the admission of the defendant. It is, therefore, perfectly competent, with this resolution as it now stands, that there shall be collusion between the plaintiff and the defendant; and by the plaintiff supporting his bill by uncorroborated testimony, in addition to the admissions of the defendant, obtain his divorce.

WALTER GEORGE SMITH, Pennsylvania: I did not grasp my friend's objection. I wish he would state it again. A decree should not be granted unless the cause is shown by affirmative proof, that is in addition to, outside from, any admissions on the part of the defendant. That means admissions on the part of the respondent would not be sufficient.

MILTON G. URNER, Maryland: Would not that first part be complete, followed by the plaiutiff's own testimony.

My suggestion is to amend so as to make the Resolution read:

"A decree should not be granted unless the cause is shown by affirmative proof, nor should such decree be granted upon the testimony of the plaintiff uncorroborated other than by the admissions of the defendant."

WALTER GEORGE SMITH, Pennsylvania: I accept that.

TALCOTT H. RUSSELL, Connecticut: It seems to me a woman might come before the court with such strong testimony of her own that it might bring absolute conviction, beyond the possibility of doubt. For instance, in the case of cruelty, she might exhibit marks of the cruelty inflicted; and I do not think under those circumstances she should be deprived of her divorce, where the court was absolutely satisfied that her testimony was correct. So I shall oppose that amendment.

VICE-CHANCELLOR EMERY, New Jersey: We are now reaching the difficult, if not dangerous ground, of attempting to define the degree of proof. In a general way, of course, I suppose this resolution meant to say that the admissions of the defendant should not be sufficient proof. I do not know that any court ever held it would be sufficient proof. The suggested amendment is that the uncorroborated statement of the plaintiff shall not be ground for divorce; I do not know of any divorce court that ever held that it was—that one party by his own oath can dissolve the marriage relation. But it is hardly possible that the proof by one party may be so corroborated by admissions of the other, or the circumstances may be such that it might be proof. I have had cases where the proofs of the plaintiff were corroborated by such admissions that seemed sufficient evidence. If it is intended to define degrees of proof I think we should be slow to do it. If it is only intended to make a declaration that the admissions of the defendant are not ground for divorce, that is another matter. It is a fundamental rule that uncorroborated evidence is not sufficient, and mere admissions are not sufficient; but to define where one corroborated by the other might or might not be sufficient is quite beyond the possibility of this Congress.

Suppose at the beginning of the sentence it should be said "For the purpose of preventing collusion," this should not be done. That is an indication that the judge should be on his guard against collusion. Judges always are, as a matter of fact; because sometimes it is easy to see how the admission has been obtained; sometimes the attorney gets the admission. I therefore move to amend, as follows:

"For the purpose of preventing collusion, a decree should not be granted unless the cause be shown by affirmative proof, aside from any admission on the part of the respondent."

SENECA N. TAYLOR, Missouri: I second the amendment. It is perfectly obvious that cases may arise, and they arise constantly where the cruelty of the husband is something that is not obvious to outside parties, which would call for such an amendment as this.

The husband may commit any number of cruelties upon his wife which nobody knows about but himself. Now, I say where she comes forward and gives straightforward testimony and convinces the jury or the court that tries the case, there should be no other corroborative testimony asked except to show her good character. That is the rule in my State; she must always show evidence of good character; and that she can always give if she has a good character. I am in favor of the amendment as offered by the gentleman from New Jersey.

WALTER GEORGE SMITH, Pennsylvania: The suggestion that Mr. Urner has made, in its final form, would be this:

"A decree should not be granted unless the cause is shown by affirmative proof aside from any admissions made on the part of the respondent, nor upon the uncorroborated testimony of the plaintiff."

Would not that be as satisfactory to my friend, the Vice-Chancellor?

VICE-CHANCELLOR EMERY: Yes; they both state recognized principles of law.

WALTER GEORGE SMITH, Pennsylvania: I will ask then for unanimous consent that a vote be taken on this:

"A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions of the respondent, nor upon the uncorroborated admissions of the defendant."

PROF. GARDNER, Massachusetts: I should like to ask the Chairman of the Committee on Resolutions a question. Suppose the ground upon which a divorce was asked was cruel and abusive treatment, and the only evidence was the evidence of the plaintiff; could the decree be granted under this provision?

WALTER GEORGE SMITH, Pennsylvania: If uncorroborated in any particular it could not be granted.

TALCOTT H. RUSSELL, Connecticut: The delegates from the State of Connecticut are in favor of Resolution 13 as it stands. They would be opposed to Resolution 13 as amended by the Vice-Chancellor. That is absolutely preventing the court from granting a divorce on the evidence of the plaintiff even when the court was convinced that the woman, for instance, told the truth. We want an opportunity to vote on each clause as it stands, or as it stood, and therefore we object to the vote being taken on this as amended; because we shall have to be against that, and shall not have an opportunity, perhaps, to vote on the original resolution. I think the Vice-Chancellor of New Jersey has correctly stated the rule of common sense, and that is we should not attempt to bind the discretion of the judge, but we

should leave the judge to enforce these rules of common sense. In general, undoubtedly, the court would not grant a decree on the uncorroborated testimony of the plaintiff, but in extreme cases it could do so.

VICE-PRESIDENT EATON: Will you allow the Chair to state its understanding of the present situation?

The Chair understands that this resolution as read, coming from the Committee, with various suggestions as to changes, which were made after it had been seconded, must be put in its form as it came from the Committee; first, because these various recommendations were made after the motion to pass had been made, and it was too late, therefore, except by unanimous consent, and that unanimous consent was not granted; therefore, the Chair rules that we must first pass upon it in the shape it is printed. The gentleman from Indiana is recognized.

H. C. SHERIDAN, Indiana: On that point I think it is safe to say that every man of long experience in the practice of law, and certainly every *nisi prius* judge who has had occasion to try divorce cases knows that some of the most horrible cruelties are inflicted upon women, and about which no human being can know anything except by what she says about it; and it is not likely that any human being ever will know about such a thing until the woman has been imposed upon to that degree that endurance is no longer possible; and I certainly am very much opposed to restricting the court as to the number of witnesses, because many of these divorces ought to be granted upon the unsupported testimony of the women alone.

VICE-PRESIDENT EATON: The question is upon the passage of the resolution in its printed form, without the additions which have been suggested.

A. R. DABNEY, California: I would like to ask the Chairman of the Committee on Resolutions as to the construction of this section. Does that construction preclude the wife from proving by other witnesses the admissions of the defendant?

WALTER GEORGE SMITH, Pennsylvania: Not at all, no, sir.

A. R. DABNEY, California: Then, as I understand the admissions of the defendant, together with the testimony of other witnesses, would be admissible?

WALTER GEORGE SMITH, Pennsylvania: I think so.

CHARLES F. LIBBY, Maine: I was satisfied with the resolution as it came from the Committee; and yet when it was suggested that

it might be wise to provide that some corroborating testimony should be required, it seemed to me that there was weight in that suggestion. Now, I do not understand that the extent of corroboration is covered by anything in this language. I understand that the court may find corroboration more or less, and still grant the divorce if it is satisfied with the truth of the testimony. Rather than defeat this resolution, I should prefer to pass it in its original form. But it did seem to me that requiring some corroboration was not a very heavy condition of relief, if the court was satisfied that on the whole the testimony was of such nature that it ought to be seriously considered. It means that something more than the testimony of the plaintiff is requisite before the court shall grant an absolute divorce.

TALCOTT H. RUSSELL,Connecticut: That is what we object to.

JUDGE WOLCOTT, Michigan: It seems to me that the position taken by the gentleman from Indiana must be the correct one, and that some discretion should be left to the trial judge. I do not believe we ought to hamper any judge by any rule adopted as to the amount of evidence which he is entitled to receive. We may define the character of that evidence, which this seeks to do, by saying that there must be some affirmative proof aside from the admissions on the part of the defendant. I take it that is to prevent collusion, whereby the husband may admit to the wife, and she may go into court and testify to these admissions, and on that alone secure divorce; and that opens the way to a collusive arrangement. But I think it is safe to let the court say what amount of proof may be required in any given case. As the gentleman from Indiana has suggested and as has come to my personal knowledge, many of the extreme cases of cruelty are of that peculiar character where no one but the wife can possibly know about the facts; and if we require corroborative proof in such cases, we practically deny her a right to apply for a divorce in a case where perhaps the cruelty is of the most extreme kind. I have always adopted it as a rule in my own court not to permit a divorce on the uncorroborated testimony of the plaintiff, except in extreme cases, which extreme cases must come before every court sometimes. There are extreme cases that appeal to every court. And so it seems to me, on the ground of equity, the judge should not be barred from exercising his discretion. The executing of these laws must be left to the judiciary to a certain extent; you cannot abrogate the discretion of the court in weighing the evidence, and if there are cases where the testimony of the plaintiff cannot be corroborated by other evidence, I think the court should be permitted to grant a decree if in its discretion the testimony is conclusive; and I understand the resolution as offered permits that; and I see no objection to it, if it is not hampered by other conditions.

EDWARD W. FROST, Wisconsin: I ask unanimous consent that the vote of the Congress be taken upon Resolution 13 as printed.

VICE-PRESIDENT EATON: The Chair has ruled that that is the question that is before the House.

The Secretary asked unanimous consent to make an announcement, and consent being granted, asked, on behalf of the Pennsylvania delegation, whose attention had been called to the matter, to have the following statement spread upon the minutes of the Congress:

"In the Summary of the Divorce Laws of the United States" prepared by the Pennsylvania delegation, and distributed among the delegates to the Congress, there appears among the causes of divorce from the bonds of matrimony, under Article IV, paragraph H the following:

'Personal abuse or such conduct on the part of either as to render the condition of the other intolerable and life burdensome.'"

This statement is taken from the Act of the Legislature of Pennsylvania, approved April 28, 1903, P. L. 326.

But the Supreme Court of Pennsylvania having interpreted similar language in a former statute as not enlarging the causes of divorce, but as merely extending the jurisdiction of the courts, this paragraph should not have been included among the causes for divorce, and it is therefore stricken out.

ROBERT W. WILLIAMS, Florida: I move that we now adjourn.

Duly seconded, and agreed to.

Adjourned.

FOURTH DAY.

Morning Session.

February 22, 1906.

The Congress re-convened at 10 o'clock, A. M.

The SECRETARY: In accordance with the Rules of Order, Vice-President Munson, of Pennsylvania, in the regular order, will preside at this morning's meeting.

(Vice-President Munson thereupon took the Chair.)

VICE-PRESIDENT MUNSON: Is there any report from the Committee on Credentials?

W. O. HART, Chairman, Louisiana: The Committee on Credentials desires to make the following report:

Washington, D. C., February 22, 1906.

To the Congress on Uniform Divorce Laws:

Your undersigned Committee on Credentials reports that since the making of its former reports, it has received from the Governor of the State of Massachusetts the credentials of S. W. Dike, of Auburndale in that State, as a delegate to this Congress.

The credentials, which are hereto annexed, are found in proper form, and your Committee recommends that Mr. Dike be recognized as a delegate to this Congress, that his name be placed on the permanent roll, and that he be entitled to a seat, voice and vote in all the deliberations of the Congress.

Respectfully submitted,

W. O. HART, Chairman.

I move the adoption of this report.

Duly seconded, and agreed to.

VICE-PRESIDENT MUNSON:We will now hear from the Committee on Resolutions.

WALTER GEORGE SMITH, Chairman, Pennsylvania: There was referred to the Committee on Resolutions at yesterday's session. the following resolution, offered by Mr. Pollard, of Virginia:

"Whereas, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem, and

"Whereas, Only eleven of the states now provide for such collection and publication, therefore be it

"Resolved, That this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary of this Congress to the governors of all the states for submission to the legislatures thereof with the object of securing as nearly as possible uniform statutes upon the subject."

The Committee on Resolutions very heartily favors the idea of this proposed resolution. The statistics are now being gathered of the whole of the United States, under the authority of a general law; but there is no provision in all of the states for the annual collection and publication of such statistics; therefore, the Committee recommends the adoption of the resolution.

F. L. SIDDONS, District of Columbia: May I ask the Chairman to accept an amendment to include the District of Columbia, to whom such bill should be sent.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I accept that with pleasure.

Motion duly seconded.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I move that this resolution lie on the table until it is reached in order.

Duly seconded, and agreed to.

VICE-PRESIDENT MUNSON: The order of the day is the consideration of Resolution 13, which is as follows:

"13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent."

VICE-CHANCELLOR EMERY, New Jersey: Since the last adjournment, I have been thinking over the effect of Resolution 13, and it would seem to me this Congress should not attempt to make any declaration on this subject; and I desire to move to strike out that resolution, and will shortly give the reasons for making such a motion.

SENECA N. TAYLOR, Missouri: I second that motion.

VICE-CHANCELLOR EMERY, New Jersey: I was a member of the Committee on Resolutions, and, taken as a simple declaration of principles, there is no doubt that it is right. A decree should not be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the respondent; and in voting for that resolution before the Committee, I did so in the view that it was a principle about which there could be no question. There is no doubt about it; but the resolution does this: we are now here attempting to formulate principles upon which a uniform law should be drafted, which we request the legislatures of the different states to pass. We have so far proceeded, and with very great effect. I think we have reached perhaps a practical basis by which the great object for which we have convened will be in the course of solution. It is a long struggle, and it will take time; but we have reached a good practical standpoint.

Now, up to this resolution, and including the one after this, all our resolutions point only in one direction, asking the legislatures to pass laws that affect in some way, either by procedure or otherwise, the causes for divorce. This one takes an entirely different direction. It is a request that the legislature shall direct the judges of the courts what is the measure of proof. This is one phrase, and few states have some other directions. Most of the states, like my own, have none; because these are considered fundamental principles of law, and whether it is necessary or not to put in the form of statutes elementary principles of the law of procedure, depends altogether on the local administration of the states. The great difference in the local administration will appear when I suggest that, in some states, not more than seven or eight judges would

have power to grant decrees. In the State of New Jersey there are only eight; in the other states, the number is limited; while in some of them every judge who holds a position on the County Court may make a decree. Many of those positions are filled at elections, and some of them are occupied by men of no extended experience at the bar, and for short terms; so that, no doubt, it often happens that in those states in the administration of justice elementary rules of law are disregarded, and you have to teach the judges law by statute.

Now, if that condition prevails, let each state pass its own statutes for itself. Of course, the number of rules which must be expressed in statutory form will vary. It has not been found necessary in many states. I think, in the vast majority, there is no direction by statute that will control the conscientious judgment of a judge sitting in a divorce case, as to whether the amount of proof is sufficient, and its character; and no matter what rules we may make for a uniform law, it could never be expected that each state in the body of its uniform law should not itself insert those additional provisions which its own local conditions render necessary. This is one of them; and I think, therefore, that, on this question of purely local adaptation, we should not attempt to make any directions at all; because you have one of two alternatives—either you must omit altogether to do it, or you must undertake to do it completely. To be done completely, it could only be done by the code that should be prepared in accordance with the resolutions; and, therefore, although my first view was with the Committee, I shall now, with the consent of the Chairman of the Committee, move that Resolution 13 be stricken out.

Duly seconded.

B. B. WINBURNE, North Carolina: Mr. President, and members of the Congress: I agree heartily with the delegate who has just taken his seat, that the adoption of Resolution 13 would be impracticable and useless. No good could come out of the enactment of the clause, for the reason so well stated by the gentleman from New Jersey. Now, in North Carolina, while we grant divorces for certain causes, it is extremely difficult to secure a divorce under our law; because our statute laws provide for the trial and exclusion of certain evidence, which makes it very difficult for a party to secure a divorce unless it is on one of those causes where the evidence is clear and satisfactory. It has been the statute law in North Carolina for a number of years that, on the trial of a divorce suit, admissions or the confessions of either party, when the cause of action is based upon alleged adultery, cannot be given in evidence for or against the defendant; except that the confessions of the defendant to third parties may sometimes be given in evidence as corroboration of the

affirmative testimony of the plaintiff. In those suits, if the plaintiff is a wife, she cannot testify as to anything except the marriage between herself and the defendant. In other suits not based upon the allegation of adultery, the wife may testify, or the plaintiff may testify, and give in evidence the declarations and the conduct of the defendant, which will give the cause of action to the plaintiff.

Now, while it seems to me it would not hurt to pass the resolution, yet the preferable course would be to strike it out entirely; because I take it that a number of the states regard a trial in this action just as the State of North Carolina does. If on the trial the court,—the judge in our state has no right to express an opinion on the evidence or the weight of the evidence before the jury, but it must be such as to satisfy the jury, and if the jury are satisfied that the plaintiff has made out her case, and has proved her charges or allegations, then they are justified in returning a verdict in her favor; but should that jury return a verdict which, in the opinion of the court, is not justified by the testimony, then the court has in its discretion to set aside the verdict, and continue the case until satisfactory proof can be furnished. And the judges in my state often do this, and they are very careful in the trial of these causes to prevent fraudulent and collusive divorces. Where there is no appearance for the defendant, the judge will see, by his examination of the witnesses for the plaintiff, and the plaintiff himself or herself, that the evidence is not false evidence, is not imposition on the court and jury, but will sift the evidence and see whether or not it is a deserving case for a divorce. When the judge comes to charge the jury, he must leave the matter entirely to them; and the statute law says what evidence shall be admissible, and what shall not be. I think, sir, that it is best to leave this matter alone, and to strike out the resolution entirely.

JUDGE WOLCOTT, Michigan: It seems to me that this resolution as drawn ought to stand as a declaration of the sense of this Congress. This is not intended as legislation. I do not believe it will be taken by any one as in any sense intending to invade the province of the judiciary in determining what amount of proof is sufficient. This body, and no legislative body, will undertake to invade the province of the judiciary in saying what kind of proof or how much proof is necessary. But we have heretofore, in this Congress, in passing these resolutions, outlined what we consider the principles that we think ought to underlie legislation; and we have undertaken to direct, in some instances, as we have in the preceding resolution, the procedure.

Now, it seems to me that, as a declaration, it is simply saying that this Congress believes that, in divorce proceedings, there are more than two parties. A divorce proceeding is not like an ordinary civil

case, where, on the default of either party judgment may be taken without any proof, or with only formal proof; and this is a declaration that, in every divorce proceeding there are three parties, the plaintiff, the defendant, and the State; and it says that it is the sense of this Congress that a divorce is not to be granted without some affirmative proof, because of the fact that the State is interested. We also declare that we are unalterably opposed to everything that looks like collusion, and so we say that it is the sense of this body that the admissions of the defendant ought not be taken as sufficient to entitle the plaintiff to a divorce.

If this resolution should stand, I desire to offer an amendment allowing admissions of the defendant as to the fact of the marriage; because that is a thing of which the proof might easily be lost; the person who performed the ceremony might die; the marriage license might be lost; the witnesses to the marriage might die; but I believe that it is the sense of this Congress, standing for what we profess to stand for here and undertaking to intimate what legislation should be, that this is a clear declaration that these cases are not the ordinary cases of breach of contract; that the State is interested; that admissions will not do; that a simple default *pro confesso* will not do, but that there should be affirmative proof—what that shall be, and how much it shall be, must rest in the discretion of the trial judge. But I believe it is a proper declaration for this body to say that there should be some affirmative proof.

DEAN STERLING, South Dakota: I think, in the first place, Mr. Chairman, that legislation of this character would be perfectly competent; and further, that in this class of cases such a provision in the Act concerning divorces, and the granting of decrees in divorce causes, is a good and wholesome provision. South Dakota has, no doubt, suffered some reproach on account of the divorces its courts have granted, and I must say some of the reproach is unjust and unmerited. It has been rendered so because of a very few conspicuous cases rather than in the course of the administration of the divorce laws generally. But if South Dakota has suffered reproach, it has not been at all because of the causes of divorce there provided for, but, if in any case,it is because of the administration of the laws as they are, and we are in favor of maintaining a provision like this.

WALTER S. LOGAN, New York: I heartily agree with what has been said by the gentleman from Michigan. I think if anything has been demonstrated during the three days we have been here, it is that this Congress is determined to make divorces more difficult rather than to make them easier. We are not here to increase the laxity of the divorce practice, but to diminish the laxity of the prac-

tice. It seems to me that to strike out this provision is a step towards laxity. The one thing that would make divorces easier—easier than they have ever been in most of the states—would be to allow them to be secured by the admissions of the defendant. The admissions of the defendant are good evidence to prove a cause of action when a defendant is actually defended; but in divorce cases the great danger is collusion, and if you wish to manufacture a case, if two people have decided that they want a divorce, it is the easiest thing in the world to get admissions in all sorts of ways in abundance that would satisfy any tribunal.

It seems to me that we should hold the standard high, that the one thing that we stand for here is that there are more than two parties in the divorce court—there is the plaintiff, and there is the defendant, and the community; and while those admissions might be good as against the defendant, they are of no use whatever, so far as the community is concerned. A divorce granted upon admissions would be a divorce in nine cases out of ten granted by collusion. You might just as well grant a divorce by default, as to grant it by admissions of the defendant. You might just as well grant it upon the pleadings, without evidence, as to grant it upon the admissions of the defendant. The admissions of the defendant in ordinary cases are of no value whatever; and, while I appreciate what the Vice-Chancellor from New Jersey says, that you may safely, in ordinary cases, leave to the judge upon the bench the determination of the evidence necessary in a cause, you must not carry that principle too far. We do not leave to the judge upon the bench the determination of the amount of evidence necessary even in a civil case upon a promissory note, for every statute contains rules of evidence prescribing what shall be sufficient to prove a given fact, or to establish a given issue. We have had rules of evidence that have come down to us from centuries past, and we have fortified those by statutes prescribing what evidence shall be given and what shall be necessary to prove a given fact. Shall we say that there is to be no provision made as to evidence in a divorce case? Shall we leave the evidence in a divorce suit alone?

VICE-CHANCELLOR EMERY, New Jersey: I do not propose that; I propose to leave that to each state.

WALTER S. LOGAN, New York: We are here to try to establish a uniform law for divorce throughout the United States. If you are going to establish a uniform law for the granting of divorces throughout the United States you must, as the very foundation, have such a code or statute—you must determine what evidence shall be necessary to grant the divorce. The evidence in divorce suits is the very foundation of the evil that we are here to correct. We are here,

because divorces have been granted on insufficient evidence in a great many states in the Union—in every state in the Union, I think —we are here to consider the question of evidence above all other questions. It is the question which lies at the root of the whole business. If you are to provide that divorces shall be granted only upon sufficient evidence—only upon evidence that is true and can be relied upon—upon reliable evidence, then all the other evils will correct themselves. This resolution, it seems to me, goes to the very root of the matter. You had better strike out every other resolution and leave this, than to strike out this and leave the others. It is the one thing that we ought to express the opinion of this Congress upon, and express it in no uncertain tones. The moment you strike out this resolution, it goes out to the whole world that this Congress is willing that divorces should be granted upon admissions upon the part of the respondent—that is, they shall be granted by collusion, because the defendant or the respondent wants the divorce granted, and you would undermine the whole foundation of a rational divorce system. I insist, Mr. President, that this is the most important provision in the resolutions that have been before us, and that it should stand as it is, or, if there is an amendment, it should be one that will make it more difficult, and the requirements as to evidence more strict, and the procuring of divorce harder.

VICE-CHANCELLOR EMERY, New Jersey: I ask the privilege of withdrawing my motion, which was, not for the purpose of showing that any delegate of this Congress did not approve of this principle, but only for the purpose of calling the attention of the Congress as to whether or not we are entering into a scope of request for legislation that might be injudicious. If any gentleman in the Congress thinks that the striking out of this resolution would have a bad effect on the general object which we want to accomplish here, the mere matter of local theory as to method of procedure does not weigh one iota in my mind. I would withdraw my own motion to strike out resolution 13.

VICE-PRESIDENT MUNSON: There being no objection, the motion to strike out resolution 13 is withdrawn. The resolution is again before the House.

JUDGE WOLCOTT, Michigan: I wish to move an amendment, to follow the printed words, as follows:

"but the marriage of the parties may be proved by the testimony of the plaintiff, or by the admissions of the respondent."

Now, it may be said that it is not necessary to the understanding of that section, yet it seems to me that qualifying clause should be put in. We will leave the amount of proof as to cause for divorce

as it is, but marriage is an essential fact to be proved in every case, and ought to be permitted to be shown by admissions of the defendant.

Duly seconded.

JOHN C. RICHBERG, Illinois: Is it not an actual fact that there can be no question that to a marriage there is always corroborative evidence?

JUDGE WOLCOTT, Michigan: Not always. There are cases, for instance, where a separation has taken place. It is possible one of the witnesses has died, the clergyman has died, the certificate is lost. I have seen cases of just that character. It would be impossible to prove the marriage, except by the evidence of the plaintiff herself; and that fact being a necessary fact to be proven in every divorce case, it seems to me that we should not undertake to exclude the proving of the marriage by the admissions of the respondent as to the fact of the marriage itself; but the cause for divorce must be proven in some other way.

JUDGE STINESS, Connecticut: I would like to ask the gentleman from Michigan if it would not be better phraseology to put it "except as to the fact of marriage."

JUDGE WOLCOTT, Michigan: I accept that.

SENECA N. TAYLOR, Missouri: I call the attention of the members of the Congress to the fact that resolution 13 says nothing about marriage—"a decree shall not be granted unless the cause"—everybody knows the cause means the offense. That fact is to be proven by corroborative evidence; that is what it means, and nothing else. Now, I call to the attention of my friend from Michigan that his resolution, or proposed amendment really does not mean anything, because in every state in the Union the parties may testify; that is a universal rule. Now, we are saying that when it comes to the one thing, the cause, there shall be corroborative evidence; and I think the proposed amendment only encumbers the ground.

VICE-PRESIDENT MUNSON: The question before the House is the amendment to the resolution, which consists in the addition of the words, "excepting as to the fact of marriage" to resolution 13, as reported by the committee.

JOHN GARLAND POLLARD, Virginia: It seems to me there is no exception contained in the provision offered by the gentleman from Michigan. Resolution 13 reads "A decree should not be granted unless the cause is shown by affirmative proof, aside from

any admissions on the part of the respondent." Then the amendment reads "except as to marriage." Well, marriage has nothing to do with the cause of divorce. It is not the ground on which suit is brought, and therefore it is not proper to say "except as to marriage." I therefore hope the amendment of the gentleman will be voted down.

VICE-PRESIDENT MUNSON: The question is upon the adoption of the amendment by the delegate from Michigan.

After calling the roll of the states, the Secretary announced that 6 states voted aye, and 23 voted no; whereupon the Chair declared the amendment lost.

VICE-PRESIDENT MUNSON: The question is now upon the original resolution.

The Secretary read the original resolution, as follows:

"13. A decree should not be granted unless the cause is shown by affirmative proof, aside from any admissions on the part of the respondent."

The Secretary called the roll of States, and announced that 30 states voted aye, and none no; whereupon the Chair declared resolution 13 unanimously adopted.

WALTER GEORGE SMITH, Pennsylvania: I desire now to move the adoption of Resolution 14, which reads as follows:

A decree dissolving the marriage tie so completely as to permit the remarriage of either party should not be entered until the lapse of a reasonable time after a decree nisi; and after hearing or trial upon the merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended.

This will be a departure from the rule in a great many States. Some similar rule exists in California, Colorado, Idaho, Illinois, Kansas, Massachusetts, Montana, Nebraska, New York, Rhode Island and in Wisconsin. The arguments against the adoption of a rule of this kind would seem to be summarized in the fact that it makes a longer delay between the initiation of a suit and the final decree. I can imagine no other argument against it. The arguments in favor are summarized in the note, and they are mainly these: A hearing has been had upon the merits; there is an interval of time in which fraud may be detected, or collusion—which, of course, amounts to fraud—or, and that is by no means the least consideration, a reconciliation effected. Now, this is a departure from the law of divorce, but it is not a departure from the law itself. In a variety of cases, a decree *nisi* is entered upon the merits, and time is allowed for consideration. Under the rule of courts, for instance, on the audit of estates, in the county of Philadelphia, and I have no

doubt in other large cities and counties, the decree in the first place is always a decree *nisi*. Not infrequently mistakes are made, which are corrected within the comparatively short period allowed in Philadelphia, namely, about 20 days. Now, we think these long periods of time of a year ought to be recommended.

Suppose that a party is forbidden a re-marriage for a period of a year after he or she has proved that under the law he or she was entitled to divorce from the bonds of matrimony, is it after all such an onerous provision? Is it not within the rights of the community, whose rights and whose general good we are here to represent, that we should protect ourselves by throwing this additional safeguard around the procedure?

Bear in mind that divorces are not of right in theory, but of favor. The community has yielded its conviction that the marriage relation once entered into establishes a status that cannot be destroyed, excepting by the death of one of the parties. This is the general principle of the law on the subject of divorce; but by reason of the frailty of human nature, and by reason of the injustice that, in the judgment of the community, would be worked in very many cases, absolute divorces are permitted. When absolute divorces are granted, then parties stand in the eye of the law as if they were not married, excepting so far as relates to their responsibilities to their children.

I think I have stated the principle fairly, and in accordance with law, in accordance with the understanding of all of us as the law is now; as the law has been in the past; not, perhaps as the law should be, in the judgment of some, whom I would refer to respectfully—but it is the only term I can use, and I do not use it disrespectfully—in the judgment of some theorists. This thought of giving this interval of time between the time of marriage and the time of the decree in divorce is gaining popularity, as you see by the number of States that have adopted it. There may be arguments against it which have not occurred to the minds of those who have had it under consideration, and who are responsible for the submission of this resolution to this Congress; if so, I should like to hear them.

MILTON G. URNER, Maryland: I would like to ask why the gentleman has inserted the word "and," after the word "*nisi*"?

WALTER GEORGE SMITH, Pennsylvania: To be a little more grammatical. (Mr. Smith reads the resolution again.) I don't think it is necessary; it ought to come out.

E. D. LEACH, West Virginia: I want to ask a question, as to whether this decree *nisi* can be appealed from, or whether it is the

idea to make the final decree entered a year after the decree *nisi* has been entered the one to be appealed from. I ask that because it is impossible in our state to appeal from a decree *nisi*.

WALTER GEORGE SMITH, Pennsylvania: Of course an appeal could be taken; but as it is now, a final decree has been entered; then before that decree becomes so far operative as to absolutely sunder the marriage tie a period of one year elapses. Technically, I can understand of course, there is no appeal to the Supreme Court, or whatever be the appellate court, except from the final decree.

E. D. LEACH, West Virginia: That is the decree to be appealed from.

WALTER GEORGE SMITH, Pennsylvania: The technical criticism I recognize at once.

TALCOTT H. RUSSELL, Connecticut: For the first time in the course of these proceedings, the Connecticut delegation finds itself unable to agree with the Committee on Resolutions; but we fully agree with the object and intent that is their desire to be carried out. I think the mistake in the resolution arises, if my friend will excuse me, from some technical procedure, imported from the Pennsylvania practice and which is unfamiliar to the rest of us. Now, the word *nisi*, I suppose, means "unless;" and a judgment *nisi* is a judgment with a condition subsequent. Now, for the benefit of those not practising lawyers, I would say that that means a judgment with a string attached. In our Connecticut practice we should not like to sanction that idea or to adopt it, and it seems to us impossible to have incorporated into a judgment the possible supposition that it might be erroneous or might be set aside. I think the effect of a decree of that sort in ignorant minds, and I would say in Connecticut divorce is largely confined to the ignorant, uncultivated classes; they do not prevail to any great extent among intellectual people—the effect of a decree of that sort would give rise to a misunderstanding. It seems to me, therefore, if the gentleman would put in a provision of this sort—that, after hearing of the facts, the court would suspend the decree, and would not pass judgment, or postpone judgment for such a time as would give opportunity for further inquiry if necessary, that that would accomplish the object intended by the committee. But we cannot vote for this judgment with a string tied to it; and I understand that in Maine this same provision was tried, and was found not to work well, and was repealed. I hope the gentlemen will smooth the way so that the Connecticut delegation can support it loyally.

WALTER GEORGE SMITH, Pennsylvania: Will the gentleman put his suggestion in writing, so we can understand it? Surely,

this committee do not care about the language in which the resolution is couched.

EDWARD W. FROST, Wisconsin: I am very much obliged, on behalf of the State of Wisconsin, for the complimentary reference in this resolution. We have worked up to this provision through some experimental stages, such as permitting divorced parties to re-marry by consent of the court made in writing and in open court, made by the court which granted the decree. But that was found lax and not satisfactory; and now our law forbids all marriage of divorced parties within a year save—and I am not sure we will agree upon the exception—save that parties divorced by each other, may, upon the petition of both, be permitted by the court to re-marry within a year; and the provision has worked so well, and has kept us from some of the evils of migratory divorces, that I am very much in sympathy with the general purpose of the resolution. We have however no such provision as a decree *nisi*, and I feel the force of the criticism by the gentleman from Connecticut.

CHARLES F. LIBBY, Maine: I as a member of the Committee on Resolutions agreed to this resolution. I think it is a wise one. In our practice in Maine at one time we had the same provision, and it was repealed unwisely, I think; because it gives opportunity for an absent defendant, against whom a divorce has been obtained without notice, to come into court and have it set aside before it becomes absolute, and before new rights have attached, growing out of a new marriage relation.

Now, I do not see the difficulty about the terms to be employed. You may take the California statute, if you please, where the decree is called an interlocutory decree, in the first instance, and after the expiration of one year on motion the court may enter final judgment granting the divorce. But it is impossible for the parties to know after the hearing whether the judge is satisfied that a final decree of divorce ought to be entered. The question of not entering it immediately is to furnish a further opportunity, if imposition has been practiced either upon an absent party or upon the court, to remedy that difficulty; and I think that the principle involved is an important one, and should be put into divorce legislation. Now in Massachusetts and Maine, we speak of these as decrees *nisi*, conditional decrees; but the language can readily be changed. Certainly, in Connecticut you have interlocutory decrees, decrees that are not final; yet at the same time they represent the conclusions of the judge reached at a certain stage in the cause.

TALCOTT H. RUSSELL, Connecticut: But they are entirely different from decrees *nisi*.

CHARLES F. LIBBY, Maine: They are conditional decrees. In California they call them interlocutory decrees. The whole point about the matter is there shall not be an absolute final decree entered which shall dissolve the marriage tie, and set the people free upon the world to enter upon new matrimonial engagements, until after a certain time has elapsed subsequent to the hearing itself.

TALCOTT H. RUSSELL, Connecticut: Would this be satisfactory to you—strike out the word "after a decree *nisi*," that is, take out your Philadelphia or Maine law language, which we do not understand?

JOHN P. McGOORTY, Illinois: I desire to read the law passed by the last session of the Illinois legislature in this regard, which is almost precisely in effect the present resolution with the proposed amendment:

"In every case in which a divorce has been granted for any of the several causes contained in section I, neither party shall marry again within one year from the time the decree was granted; provided, that when the cause for such divorce is adultery, the person decreed guilty of adultery shall not marry for the term of two years from the time the decree was granted; provided, however, that nothing in this section shall prevent the persons divorced from re-marrying each other."

And then follows the penalty.

I do not think there is any difference of opinion between the members of this Congress as to the importance of passing this resolution, for the reasons stated, and I think the amendment tends to clear up any ambiguity.

I desire to say, while I am on my feet, that the Illinois legislature at its last session passed an act doing away with common law marriages in that State.

JUDGE STINESS, Rhode Island: The object sought in this resoluiton will probably not be objected to by any one, and our views seem to be unanimous. The only question is how to accomplish our purpose. It is a clause to prevent imposition upon the court. In the State of Rhode Island we found there were many cases of imposition; such, for instance, as men swearing they did not know where the wife lived, when she lived in the same house with them; while in another case, the officer made return that he had left a copy of the citation with the respondent, which in fact he had, but he had taken it away before she had had an opportunity to read it. Now when the cases are filed in court, that does not go out to the public; nobody knows much about it; it is only by accident that a respondent learns about it. But when that case is heard and de-

cided then it is reported in the papers, and the parties hear about it; and numerous cases have occurred in which parties have been divorced, and the respondent for the first time knew that she had been divorced, after the decree was entered, and the act had become complete. Now, in order to protect itself, the court adopted a rule that a decree should be ordered but not entered until six months after the time that it was ordered.

If, then, the phraseology of this resolution interferes with the practice of Connecticut, it could easily be obviated. The term "decree *nisi*" has a different operation in different states; it is a technical term that is perhaps not aptly used. But the suggestion that the decree should not be entered for more than a year or six months is liable to this objection—that the judge who heard the case may die or be removed from office or resign. He cannot then enter a decree at all, and how can anybody else? Now, if the order for the decree immediately follows the hearing, and then the entry of it is sus pended for a period of six months or a year, it seems to me it covers the whole case.

F. H. BUSBEE, North Carolina: Is there a provision in the Rhode Island statute for the publication of this order for judgment? If that were added, it would not be dependent upon the question whether the newspapers should publish it. If this order should include an order of publication that a decree had been entered, it would seem to me to cover the ground exactly.

JUDGE STINESS, Rhode Island: That might be. But there is no such provision for the publication of the order. The fact is, however, the newspapers do publish them, and with greater avidity almost than any other class of cases; and after the cause has been heard and the decision entered, we have had no difficulty; and since the adoption of this rule we have had no case, within my knowledge, in which there has been any application to the court as to a decree on the ground of imposition. Several times decrees had been entered, and after the other party learned of it, he or she married again, it being too late then to recall it.

WALTER S. LOGAN, New York: It seems to me that the amendment proposed by the gentleman from Connecticut emasculates the resolution. I think the resolution should be passed in the form in which it is reported, or in substantially that form. The point is a decree should be entered, and then a time should elapse after the decree has been entered, before it becomes finally effective for all purposes. It is not sufficient that the time should elapse after the hearing or trial upon the merits; that would simply mean that the judge is holding back his decision, holding it under advisement. The amendment proposed, striking out the decree *nisi*, would only mean

that the judge might withhold his decision for a year, and judges often do hold them for a long period of time. The point is, there should be an actual decree made which does not become entirely effectual until the specified lapse of time. I think, instead of a decree *nisi*, the language used should be "until the lapse of a reasonable time after the interlocutory decree," that would cover it. That would suit our practice, and an interlocutory decree is perhaps better understood than a decree *nisi*. But there should be a decree, and then the time should elapse after that decree is made.

E. D. LEACH, West Virginia: I want to offer another suggestion. I cannot see where the suggestions that have been made will fit the practice in a great many states I am familiar with; and I think this would possibly bear the thing out. Suppose the decree that is entered is final, and then the Act provides within six months or a year, whatever time within which it may be, an appeal or re-hearing could be taken; and that the parties are not to re-marry until after the time for the appeal or re-hearing expires. That would fit our practice.

F. H. BUSBEE, North Carolina: It seems we are all very nearly entirely in accord. The suggestion from the gentleman from West Virginia, coupled with the suggestion by the gentleman from New York, it seems to me, would remedy the evil, and put us entirely in shape to suit the policy of all the states. Certainly, the party who wins the case ought not to be required to wait six months before he can appeal; but he cannot appeal unless it is a final decree. Why would it not answer every purpose to enter the final decree, providing in the terms of the decree—and that is practically in accordance with the gentleman from Rhode Island—that it shall not take effect within six or twelve months? Then the appellate jurisdiction of all the states would at once attach, so an appeal could be taken; and if no appeal were taken, it requires no further order of the court; the judge who tried it would have passed upon it, the final decree would take effect at the expiration of six months. I think it would obviate the objection of the gentleman from Connecticut, and that of the gentleman from West Virginia. The right to appeal would attach at once. It ought, however, to be a final decree entered by the judge who tried the case, and providing in the terms of the decree the time after which it should take effect. That, I think, would obviate the objections.

SENECA N. TAYLOR, Missouri: We are all aiming at the same thing, but we are taking different roads to reach it. As a substitute, I am going to offer the following:

"After the trial by the court, or a verdict by a jury, no judgment

or decree shall be entered thereon until one year has elapsed, after such trial, which shall dissolve the marriage tie authorizing the parties to re-marry."

Duly seconded.

SENECA N. TAYLOR, Missouri: The judge has heard the testimony, and found the facts, or, if the case is tried before a jury, they have rendered a verdict; and everybody knows what the finding of facts will be, and everybody knows what the verdict is by the jury. Now, that will cut off all quibble, and prevent evasion; the parties are still bound by the marriage tie, and continue so until the final judgment or decree. There is no uncertain tone of what we are talking about; there is no saying that if the parties get married they must take the risk of it, because the marriage tie is binding until the final decree is made.

E. D. LEACH, West Virginia: The difficulty with that is just as I stated in the beginning. If that should be the act, then when a decree is granted say one of the parties who is a non-resident does not appear in court; a decree is granted, and the party has to wait a year. There is no provision made there for the defendant in the case to come in and take advantage of any irregularities in the proceedings at all, or to have a re-hearing until that year is up; because an appeal cannot be taken under most jurisdictions until the decree is final.

That is the difficulty in the whole thing. If the decree is made final, and a provision made that the parties cannot marry again for six months or a year—that being the time set in which an appeal or re-hearing can be taken in the case—if the other party wants to come in, you have got it. If you hold the thing up until the year has elapsed, and then you enter the decree, and an appeal cannot be taken until after that decree has been entered a year, and then you do not know whether there is going to be a contest or re-hearing, or anything of that kind, then the party may have a right to re-marry, and after that time the appeal may be taken after they are married and the decree may be set aside.

OTTO J. KRAEMER, Oregon: As has been stated before, this Congress is in accord with the principle desired. It seems to me there have been about fifteen suggestions as to how the resolution should be worded; and I think if it should be re-committed, or sent to a committee to word it, we would save time. I move that we refer the entire matter to a committee of three to report something in accordance with the principle declared in the resolution.

VICE-CHANCELLOR EMERY, New Jersey: The main object of the passage of the resolution is the declaration and statement of

principle. Of course, we all expect that the principles finally adopted will be carried out by the draft of a statute or code, or whatever you may call it. It is evident that, from the diversity of practice, neither this Congress in its present session, nor any committee at a sitting, would be able to draft a statute that would carry out the principle we want, if we took the whole day for the business. Now look at Resolution 14:

"A final decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not be entered until the lapse of a reasonable time after a decree *nisi* after hearing or trial upon the merits of the cause."

Now, if the words "decree *nisi* after" would be taken out, the principle stated would be "until the lapse of a reasonable time after a hearing or trial upon the merits of the cause." That might be followed by any kind of a decree in separate practice. The principle we want to reach is that, after the hearing or trial closes, a reasonable time should elapse. That declares the entire principle. On that we all agree. If the words "decree *nisi* after" were stricken out, it would obliterate all questions arising on form; and then the committee who had in charge the drafting of the bill or code would have to meet that provision so as to be satisfactory to the delegates of the Congress.

F. H. BUSBEE, North Carolina: May I offer a suggestion? Suppose we make the resolution read:

"A final decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause."

VICE-CHANCELLOR EMERY, New Jersey: I am opposed to the amendment, because it attempts to carry out the declaration by a particular form applicable to some and not to other states. If the original resolution is corrected as suggested by the delegate from North Carolina, we get the principle complete, and we leave the Committee the unenviable task of drawing a statute, which will be a complicated thing to do.

WALTER GEORGE SMITH, Pennsylvania: I ask the unanimous consent of this Congress that all pending amendments be withdrawn in order that those offered by the gentlemen from New Jersey and North Carolina may stand. Then Resolution 14 will read:

"14. A final decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the merits of the cause."

VICE-PRESIDENT MUNSON: The various amendments are withdrawn, and the question before the House is upon the resolution as just read.

A. R. DABNEY, California: It seems to me that the experience of the delegates who represent states that have this provision embodied in their statutes should have considerable weight with this Congress. I represent a state that has almost this identical principle embodied in its laws, and it has been tested thoroughly, and meets the unanimous approval of the bar and courts of the State of California. I think this provision, amended as suggested by the gentleman from Connecticut, approved by the gentleman from New York, and accepted by the Chairman of the Committee on Resolutions cannot be better; and I hope it will receive the unanimous approval of this Congress.

WALTER S. LOGAN, New York: With all due deference to the last speaker, and if the gentleman from North Carolina will allow the suggestion, and incorporate it in his recommendation, I will soon have finished, and not make any objection to the unanimous consent. After a hearing and trial upon the merits, the decision may be held up for a year. The important thing about the question is the decision; if, therefore, the word decision is added after hearing or trial, I think the thing will be complete, and meet the views of our State as it does not in the present form. Not decree, but decision, so that this year or six months, or two months, shall not have as a part of it the time which the decision is held up by the court or decree. My suggestion is that, unless that is put in, I shall object to the unanimous consent.

WALTER GEORGE SMITH, Pennsylvania: I rise to a point of order. Unanimous consent was given to substitute the amendment as read; and it is now too late to object.

VICE-PRESIDENT MUNSON: The Chair is compelled to hold that if the Committee on Resolutions, acting by its Chairman, accepts an amendment to its resolution, unless some member of the Committee on Resolutions objects—they being the movers of the resolution—the amendment becomes a part of it. The question is now upon the resolution as changed by the Committee on Resolutions.

DEAN STERLING, South Dakota: It occurs to me that the use of the word "final" in this connection is hardly a proper use; there is a seeming incongruity in a final decree not becoming operative.

WALTER GEORGE SMITH, Pennsylvania: On behalf of the Committee, I accept the amendment to strike out the word "final."

WALTER S. LOGAN, New York: It seems to me that the resolution in the form it now stands does not provide for the entering of a decree or the making of a decision. It entirely fails to accomplish the purpose of the resolution, which is to let a period of time elapse after there has been a formal decision embodied in a decree, or in an order, or in some form. The resolution as now proposed only provides for a lapse of time after the hearing or trial. That does not accomplish our purpose. It is entirely ineffectual. The courts may hold a decision for that whole length of time, for the whole year, if need be; and then the parties, after that lapse of time, may re-marry at once—the day after the decree is entered. It seems to me that section six of the Act proposed by the American Bar Association and the Conference on Uniform State Laws as amended by the Inter-State Church Conference covers the point entirely. I move that as a substitute for the pending resolution, the following:

"14. No final decree or judgment for divorce shall be entered until after the expiration of six months after the judicial decision allowing the divorce; and, until after the expiration of a further period of six months after such entry of the final decree or judgment, neither party shall marry again."

It seems to me this covers the whole proposition, and it has the unanimous endorsement of the Inter-Church Conference, which certainly ought to give it some weight.

Duly seconded.

A. R. DABNEY, California: With reference to the amendment offered by the gentleman from New York, there is this objection: As I understand the amendment, it allows a final decree six months from the hearing, and then provides that the parties shall not re-marry until the expiration of a further period of six months from that date. Now, we have had the experience in California that during those six months the parties can go outside of the State and re-marry. The provision ought to be that no final decree be entered until the expiration of one year after hearing; then the parties cannot go anywhere and be married during that period.

(Calls for the question.)

The question being upon the amendment by the gentleman from New York, and the roll of the states being called, the Secretary announced three states voting aye, and twenty-seven states no; whereupon the Chair declared the amendment lost.

The question being upon the resolution as now reported by the Committee on Resolutions, to wit:

"14. A decree dissolving the marriage tie so completely as to permit the re-marriage of either party should not become operative until the lapse of a reasonable time after hearing or trial upon the

merits of the cause. The Wisconsin, Illinois and California rule of one year is recommended."

and the roll of the states being called, the Secretary announced thirty states voting aye, and no state no; whereupon the Chair declared the resolution unanimously adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I now move the adoption of Resolution 15, as follows:

15. In no case should the children born during coverture be bastardized, excepting where they are the offspring of bigamous marriages, or the impossibility of access by the husband has been proved.

Duly seconded.

The question being called for, the Secretary proceeded to call the roll of the states, and when Louisiana was reached, the chairman of that delegation said:

The State of Louisiana votes aye, with the statement that its delegates would have preferred an exception to have been made in the case of the children of a marriage where the parties were not legally capable of contracting it, but where one of the parties acted in good faith.

The Secretary then completed the calling of the roll, and announced thirty states voting aye, and no state no; whereupon the Chair declared Resolution 15 unanimously adopted.

VICE-PRESIDENT MUNSON: Ladies and Gentlemen of the Congress, I believe I am justified in addressing you and congratulating you, and through you the people of the United States, upon the adoption of these exceedingly valuable fifteen resolutions.

AMASA M. EATON, Rhode Island: I presume that after passing these resolutions section by section, it would be in order to pass them as a whole. I so move, and I hope that that motion may pass unanimously.

JOHN GARLAND POLLARD, Virginia: I have some resolutions which I desire to be added to the resolutions already adopted, and under the rules they have to be referred to the Committee on Resolutions; and I will ask the gentleman from Rhode Island to allow the resolutions to be read to the Congress at this time, because they are to be added. I understand that they would have to go to the Committee, and all I now ask is permission to offer them to the Congress at this time that they may be referred.

AMASA M. EATON, Rhode Island: I must reluctantly decline.

VICE-PRESIDENT MUNSON: The gentleman from Rhode Island moves that we vote on the resolutions as a whole.

WALTER GEORGE SMITH, Pennsylvania: I rise to a point of order. My friend, the gentleman from Rhode Island, is under the impression that it is necessary to pass these resolutions again. Each one, however, is a separate and distinct resolution, and expresses the sense of the Congress on the particular subject. I suggest, therefore, that the motion is not in order.

VICE-PRESIDENT MUNSON: The Chair is compelled very reluctantly to hold that the point of order is well taken. We have voted by states upon each resolution, and the Chair doubts whether consistently we can vote upon them again.

DEAN HUFFCUT, New York: I understand the Chair has ruled there is no motion before the House? I should like, then, to offer some resolutions, but before doing so I wish to state the reason for offering them. As I stated at an earlier stage of the proceedings, all the resolutions were drafted upon the theory that jurisdiction should depend entirely upon the residence of the plaintiff. We then made a change by providing the following:

"All suits for divorce should be brought and prosecuted only in the state where the plaintiff or the defendant had a *bona fide* residence."

This is contrary to the existing provisions of three-fourths of the states, introducing a jurisdiction dependent upon the residence of the defendant. We then proceeded very carefully to define the conditions attending the jurisdiction depending upon the residence of the plaintiff; but although we are making a change in this respect in the laws of three-quarters of the American states we have left it upon the bare proposition that jurisdiction dependent upon the residence of the defendant shall be without limitation.

Now, I find that, in those states in which jurisdiction is dependent upon the residence of the defendant, that jurisdiction is quite clearly limited, although those states are in the great minority of the American states. I assume that the object of the Congress is, at least, to prevent migratory divorces and to prevent collusive divorces; and the resolutions, as we have now adopted them, permit the combination of migratory and collusive divorces, because if jurisdiction is to depend upon the residence of the defendant, with nothing limiting it, it is only necessary for two parties living, we will say, in the State of New York, who desire to be divorced, to agree that one of them shall move to a state in which divorce may be granted, we will say, for desertion, and the plaintiff shall then follow the defendant, who has established a residence; and thus we have the combination of the two greatest divorce evils, namely, the migratory divorce plus the collusive divorce.

Now, the answer was made, in response to similar resolutions earlier in our proceedings, that we were only declaring a general

principle, and that it was not for us to fix the statutory provision; and yet, in the face of it, we spent a whole day in fixing the restrictions upon the case where jurisdiction depended upon the residence of the plaintiff, and we have left unlimited the jurisdiction dependent upon the residence of the defendant. We have thus made it possible for two people, who want to be divorced, to accomplish the whole thing in the course of a very few months by the defendant moving into another state, and the plaintiff suing the defendant there. I therefore propose, Mr. Chairman, these two resolutions, limiting the jurisdiction where it depends upon the residence of the defendant, in the same way and on the same terms as we have limited the jurisdiction where it depends upon the residence of the plaintiff; and suggest that there be added as a separate paragraph to Resolution 2, the following:

"When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

And to Resolution 3:

"Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years' residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose."

Now, I wish to conclude by saying simply that, when we remember there are at present less than one-third of the American states that will take jurisdiction unless the plaintiff has a residence, and that we have proposed a uniform code asking all the states to take jurisdiction when the defendant alone has a residence, it seems to me that so radical a change as that opens wide the door to collusive and migratory divorces unless very carefully guarded.

And, now, I only want to detain you long enough to emphasize what seems to me to be the extreme importance of this particular question; to emphasize it by again calling the attention of the Congress to the fact that it will change the law of two-thirds of the American states, giving jurisdiction in divorce where none was given before, and that without any suggestion or recommendation from this Congress as to how that jurisdiction should be so limited as to prevent the very abuses we have met here to prevent.

VICE-CHANCELLOR EMERY, New Jersey: This matter is a very important one, and if the effect of the passage of these resolutions would be of itself to commit the Congress and those who should draft the statutes under its directions, to conditions which would change the law substantially and make it a means of collusion, these resolutions should certainly be adopted. But I do not take the

resolution which has been adopted upon the question of domicile to be any declaration, upon the part of this Congress, as to the principles upon which the laws should be drafted indicating the limitation to be put in cases where jurisdiction depends upon the domicile of the defendant. It was only a declaration adopted to meet the first proposition presented, that in no case should jurisdiction depend upon anything else than the domicile of the plaintiff, and that was shown to be so contrary to the general American doctrine of domicile, that the general declaration was adopted that jurisdiction was given by the residence of either one or the other. That merely declared the principle, and did not undertake to define the restrictions upon one or the other; and it should not be so considered.

This first resolution on the question of domicile was adopted as the almost unanimous opinion of the Congress upon the single question as to whether domicile should be that of the plaintiff alone, or of one or the other. Now that having been done, some delegates proposed what occurred to them should be the restrictions upon the domicile of the plaintiff. Those were adopted; nobody suggested any as to the domicile of the defendant. But that does not at all prevent the committee which shall have the drafting of the law in charge from adopting those provisions of the states now in force as to what will be the restrictions when the domicile is that of the defendant. We cannot now undertake to draft a carefully formed statute limiting the question either one side or the other. We have made some declarations as to restrictions on the part of the plaintiff, but others will have to be inserted, and there are others on the statute books of every state. And so with the defendant.

Now, it is a very difficult thing to express at once here and by a resolution of this Congress every proper restriction upon a plaintiff resident or every proper restriction upon a resident defendant as a ground of jurisdiction. It will be found in most cases that, where the question of desertion is involved and it is a point of jurisdiction, the defendant or the plaintiff must reside for the same time; and so where the single question of desertion is involved, I think it will be found in all the states it is the same length of time. Now, when the committee come to draft the code, this will have to be put in. I had in mind a case, and I would ask Dean Huffcut to read his resolution, to see whether it would cover the single case that occurs to me.

Those restrictions, so far as I can judge them by their reading, seem to be entirely proper.

JOHN GARLAND POLLARD, Virginia: As I understand it, under your rules, these resolutions should be referred to the Committee on Resolutions without debate.

VICE-PRESIDENT MUNSON: The point of order is made by the

delegate from Virginia as to the resolutions of the New York delegate, requiring that they go to the Committee on Resolutions; and the Chair is obliged to sustain the point of order.

JOHN C. RICHBERG, Illinois: I have no doubt the resolutions offered by Dean Huffcut which will go to the Committee on Resolutions will be well and properly considered, and that they will certainly receive that consideration they deserve. I rise for the purpose of making a motion here at the request of the majority of the Committee on Resolutions, who of course have a great deal of work to do hereafter, and also at the request of a large number of delegates. My motion is embodied as follows:

"Resolved, 1. That the resolution adopted by this Congress on the subject of divorce be referred to the Committee on Resolutions, with instructions to embody them in a statute to be submitted eventually as a uniform statute on the law of divorce to all of the states.

"2. That when this duty shall have been performed, the Chairman of the Committee shall communicate the fact to the Governor of Pennsylvania, the President of this Congress, with the request that he call the Congress together to consider the proposed statute.

"3. That copies of the proposed statute be printed, and distributed to each delegate to this Congress at least thirty days before the date set for its re-convening as herein provided for.

"4. That the resolutions adopted by this Congress, on the subject of divorce, be printed, without delay, and distributed to each delegate to the Congress, and the delegates be requested to bring these resolutions to the attention of the governors of the different states that they may be submitted to the legislatures, and to the Commissioners of the District of Columbia, and that copies be sent to the President of the United States for such action as he may deem proper."

AMASA M. EATON, Rhode Island: I rise to second the resolutions, and I hope that they may be adopted. It allows a certain flexibility which is necessary. It is impossible for us to fix a time now, and adjourn to a day certain. If we leave it in the discretion of the President of this Congress with full knowledge that the Congress will be re-convened, it will be to the best advantage of all concerned. It gives me pleasure to second the resolutions.

FRANCIS TRACY TOBIN, New Mexico: I wish to offer an amendment—that after the word "states" in the fourth resolution be added the words "and the territories of the United States."

Amendment duly seconded, and unanimously adopted.

DEAN STERLING, South Dakota: On the question of the original motion, I would like to ask if it will be in order to move a re-consid-

eration of the vote whereby any of these resolutions have been adopted. I understand the Chair has already said it is not necessary to vote upon the resolutions as a whole. I am simply asking whether it is proper or not.

VICE-PRESIDENT MUNSON: The Chair is compelled to say, Mr. Sterling, that the work of the Congress on these resolutions is closed. I hardly think at this time a motion to re-consider would be in order. We have before us the resolutions of the delegate from Illinois touching the future meeting of this Congress. The question is now upon the passage of these resolutions.

PRESIDENT WARREN, South Dakota: Would it be in order to add this amendment, so that when called it shall be as far west as Chicago or St. Louis? I offer that as an amendment.

Not seconded.

VICE-PRESIDENT MUNSON: The question now is on the resolution of the delegate from Illinois, which the Secretary will please read as amended.

The Secretary read as follows:

"Resolved, 1. That the resolutions adopted by this Congress on the subject of divorce, be referred to the Committee on Resolutions, with instructions to embody them in a statute to be submitted eventually as a uniform statute on the law of divorce to all of the states.

"2. That when this duty shall have been performed, the Chairman of the Committee shall communicate the fact to the Governor of Pennsylvania, the President of this Congress, with the request that he call the Congress together to consider the proposed statute.

"3. That copies of the proposed statute be printed, and distributed to each delegate to this Congress at least thirty days before the date set for its re-convening as herein provided for.

"4. That the resolution adopted by this Congress, on the subject of divorce, be printed, without delay, and distributed to each delegate to the Congress, and the delegates be requested to bring these resolutions to the attention of the governors of the different states and the territories of the United States, that they may be submitted to the legislatures, and to the Commissioners of the District of Columbia, and that copies be sent to the President of the United States for such action as he may deem proper."

The question being upon the adoption of these resolutions, it was unanimously agreed to.

JOHN GARLAND POLLARD, Virginia: I offer the following resolutions, and I would like to have them read and referred:

"16. Each state should adopt a statute embodying the principle

contained in the Massachusetts Act, which provision is as follows:

'If an inhabitant of this commonwealth goes into another state or country to obtain a divorce for a cause which occurred here while the parties resided here or for a cause which would not authorize a divorce by the laws of this Commonwealth, divorce so obtained shall be of no force or effect in this Commonwealth.' 2 Mass. Compiled Laws, 1902, chap. 152, page 1357; Public Statutes, chap. 146, sec. 41; Andrews vs. Andrews, 188 U. S. 15.

"17. Fraud or collusion in obtaining or attempting to obtain divorces should be made statutory crimes by the criminal code."

REV. DR. HENRY C. MINTON, New Jersey: I desire to offer the following resolution:

"Resolved, That it is the sense of this Congress that the evils of divorce, being in large measure due to hasty, unwise and ill-advised marriages, would be very appreciably decreased if all ministers, magistrates and other persons performing the marriage ceremony would exercise the utmost caution in this matter, especially in respect to the marriage of divorced persons; and that any proper action on the part of either the states or the churches in this direction would be in the interest of the object which this Congress is aiming to accomplish."

VICE-PRESIDENT MUNSON: This resolution is referred to the Committee on Resolutions.

Is the Special Committee on Marriage and Marriage Licenses ready to report?

JUDGE STIMPSON, Indiana: Professor Gardner, of Massachusetts, is the Chairman of this Committee. In his absence, I beg to present our report.

The Committee on the subject of Marriage Licenses and Marriage beg to report the following:

Whereas, The marriage contract considered solely in its legal aspects is a purely civil contract, affecting the contracting parties alone, yet, in a wider sense, by reason of its vital importance to posterity, to the State and to society in general, is something more than a purely civil contract.

Therefore, It is the sense of this Congress that such suitable restrictions and requirements should be provided by law for the issuance of licenses and the solemnization of marriages as will impress upon candidates for matrimony the sacredness of the vows and the permanency of the marriage relation.

Among the fundamental principles to be embodied in such laws, this Congress recommends the following:

a. An application for a marriage license should be made to the

proper official a sufficient time in advance of the issuance thereof, to give at least two weeks' notice of the application.

b. Such application should state the full names of the parties, and their respective places of residence.

c. That the official to whom the application is made shall cause to be given notice, by publication in some newspaper of general circulation published in the county, if any, by at least one insertion two weeks prior to the issuance of the license, which notice shall state the full names of the parties and their respective places of residence.

d. No license shall issue in any county other than the domicile of one of the applicants.

e. No license shall issue where either applicant is a minor, without the written consent duly attested of parents or guardians.

f. No marriage shall be solemnized without the presence of suitable witnesses, nor except upon license duly issued.

GEORGE GARDNER,
S. C. STIMSON,
J. N. FELLOWS.
H. K. WARREN,
J. R. THORNTON.

I now move the adoption of the report.

Duly seconded.

JUDGE STIMPSON, Indiana: In moving the adoption of the report, I will say the main purpose of the Committee is to secure publicity, and to prevent clandestine and hasty marriages.

Subdivision "a" secures publicity.

Subdivision "b" taken in connection with other subdivisions, would prevent young people from fleeing to other places and securing licenses, where they could not be obtained at the place of the domicile, and would prevent any ill-considered marriages, and I believe ill-considered marriages one of the greatest evils we have today.

RALPH BRECKENRIDGE, Nebraska: Do they involve the prohibition of marriage in any event without a license?

JUDGE STIMPSON, Indiana: No, sir.

RALPH BRECKENRIDGE, Nebraska: Do you not think they should?

JUDGE STIMPSON, Indiana: I think that is a good suggestion.

VICE-PRESIDENT MUNSON: There is added to the resolutions one that marriage shall be by license only.

SENECA N. TAYLOR, Missouri: I have drafted this:

"License to marry shall be obtained before the same shall be solemnized by any persons authorized to solemnize the same, and such license shall only be issued in the city or county of the residence of one of the parties proposing to marry; and before such license shall be issued the parties to be married shall cause to be published in the state or county of the residence of one of the said parties notice for three successive weeks of the time when and place where such application for marriage license shall be made."

JUDGE STIMPSON, Indiana: I would gladly accept that amendment, but we discussed that in the Committee, and found it would not be advisable to encumber our report with matter that pertains more to the legislature.

VICE-PRESIDENT MUNSON: As the amendment has not been seconded, the resolution before the House is on the adoption of the Committee on Marriage and Marriage Licenses, with a change to the effect that no marriage shall be valid except by means of a license.

FRANK H. KERR, Ohio: I do not see any provision in the report for the publication of banns. I want to know if there is any provision in the report for marriage by publication of banns and not a license?

JUDGE STIMPSON, Indiana: No; it provides for the publication of the application for license. I have no objection to it, and think it would be a good addition.

F. H. BUSBEE, North Carolina: Does it not strike some of the members of this Congress, as it does me, that we are proceeding upon matters of certainly equal importance to the legislation about divorce at probably the heels of the convention, and discussing matters which, to consider fully, would take perhaps hours, if not days? For instance, it is suggested that we make all marriages without licenses invalid. That would be utterly impossible to pass in many states. To put that enormous engine of fraud into the hands of an unscrupulous man, go before a minister, or other officer, upon an allegation of a license or on a forged license and deceive a trusting woman, and not make it a valid marriage! Why such a proposition as that would be met with horror. Make it as high an offense as possible for the minister or magistrate, or other officer, who marries a couple without a license; let that requirement be made as strong as possible against the party who marries without the authentication of the law; but to put a woman—because the woman would be the one to be deceived —to put her at the mercy of an unscrupulous man, a man with a forged marriage license, would seem to me to be abhorrent to justice.

The provision for three weeks publication in advance of marriage increases the costs of obtaining marriage licenses to such an extent that it will prove a very heavy bar to matrimony; and I say it would be impossible to increase it in the State of North Carolina, where the poorer class of negroes could not afford to pay any more than they do for marriage licenses. I suggest that this report be either referred back to the Committee or to the Committee on Resolutions to report at the adjourned meeting.

JOHN C. RICHBERG, Illinois: At the instance of a great many members of the Congress, I move that this report be referred to the Committee on Resolutions.

Duly seconded.

VICE-PRESIDENT MUNSON: It has been moved and seconded that the report of the Committee on Marriage be referred to the Committee on Resolutions.

SENECA N. TAYLOR, Missouri: And that the report be printed and placed in the hands of the members.

REV. DR. SAMUEL W. DIKE, Massachusetts: I want to say that this matter is one of great importance and very great interest. I hold in my hand the digest of the laws, and regulations of several states, pages 46 to 70 of Carroll D. Wright's Report on Marriage and Divorce. There are a great many details that need attention. I think myself the motion by the gentleman from North Carolina entirely correct, only I would like to have this body simply take action urging the importance of attention to this matter. I think that is about as far as we can go.

There is another point I would like to refer to, which I do not think is covered by these resolutions. There is a great deal of trouble about people in Massachusetts going to Rhode Island to marry. There should be at least, say, five days between the issuance of the license and the ceremony. That would check a great deal of that evil. Then there is a very great difference in license fees, from $1.00 in Maryland to $1.50 in Delaware, and less in Pennsylvania, and nothing at that time in New Jersey; and you will see where three states come together what will result on that score. These are only one or two of the points worth thinking of—that a marriage should take place ordinarily in the place where the parties live, and one of the greatest evils—

VICE-PRESIDENT MUNSON: The Chair does not think the gentleman's remarks germane to the question before the House.

JUDGE STIMPSON, Indiana: I shall not object to the sending of this report to the Committee on Resolutions. I would be very glad

to be relieved of it further, but want to make an explanation and read an amendment. I have amended subdivision f, as follows:

"f. No marriage shall be solemnized without the presense of suitable witnesses, nor except upon license duly issued."

Now, as to the expense of publication, which is the main objection from the gentleman from North Carolina; the notice is not a large one and would not cost much, and it would not be as expensive as the issuance of a license, and not near as expensive as paying the costs for divorce later on; and in the long run it would be a large saving to some of the poor people of our country, as far as expenses is concerned; and I do not think the question of paying $1.00 or $1.50 for advertising should stand in the way of marriage.

VICE-PRESIDENT MUNSON: The question before the House is the reference of the report of the Committee on Marriage to the Committee on Resolutions.

WALTER S. LOGAN, New York: I am in favor of the motion to refer the report of the Committee on Marriage to the Committee on Resolutions, because I am opposed to the adoption of the report of the Committee; and I think the matter should be further considered before we attempt to adopt it. I do not think the negroes of North Carolina are the only people who would object to the expense of publication in newspapers for obtaining a license. I think the delegates from New York represent a great many thousand people who want, and are entitled, to get married, who would object to an expense of that kind, especially when you would have to publish it in a metropolitan newspaper which charges fifty cents a line. And the State of New York has been accused of being very strict in relation to divorces. We do not wish to be understood as being so strict in relation to marriages, that we desire to impose any unreasonable requirements upon parties who desire to be married. There are in the State of New York thousands and thousands of people married every year, who would think it a great hardship not only to procure a license and pay for the fees, but still more to pay for the publication in the newspapers of their intention to obtain that license.

I think that these resolutions which do make marriage so much more difficult and more expensive are properly subject to severe criticism; and should be seriously considered before this Congress is through with them.

BISHOP SHANLEY, North Dakota: This is, I understand, a motion to refer to the Committee on Resolutions the report of the Committee on Marriage. I think that committee has already earned its laurels—it has worked hard, and has a great deal to do before this

Congress meets again, and I move that the report be referred to a special committee.

VICE-PRESIDENT MUNSON: As the last motion remains without a second, the question is on the reference of the report to the Committee on Resolutions.

The question being as stated by the Chair, it was agreed to.

W. O. HART, Louisiana: I desire to offer a resolution simply for the purpose of reference, and I ask the unanimous consent of this Congress that it be considered at this time:

"Resolved, That as the preservation of the home is the keystone of liberty and of national life, it is peculiarly appropriate that this Congress should have been called by the State of Pennsylvania, which in so doing has again shown its devotion to patriotism and principle;

"Therefore, be it further resolved, That the thanks of the people of the United States represented by the members of this Congress be and they are hereby extended to the State of Pennsylvania, its Governor and its people for their great services in providing for and calling this Congress."

Duly seconded.

VICE-PRESIDENT MUNSON: May I ask Judge Lanning, of New Jersey, to take the Chair?

JUDGE WILLIAM M. LANNING, New Jersey, then took the Chair.

VICE-CHANCELLOR EMERY, New Jersey: May I ask that you add a second resolution to yours, as follows:

"Second: That the thanks of the Congress are given to the delegates of the State of Pennsylvania to this Congress, whose arduous preliminary work undertaken for the purpose of aiding the Congress in reaching a satisfactory and expeditious settlement of the questions before it has so largely contributed to this result."

W. O. HART, Louisiana: I had thought of incorporating a resolution such as is embraced in the second resolution, but, on second thought, I did not think the Congress have this right. I do not think we should thank ourselves or any one of us, and that is why I did not incorporate the resolution offered by the gentleman from New Jersey.

JUDGE STINESS, Rhode Island: I do not see that we have any authority to express the thanks of the people of the United States; that is assuming a little too much; I think it ought to be the thanks of this Congress only. We are representatives, true; and should

express our thanks; but let it go at that. I think it would sound very large to let it go out that we express the thanks of the United States.

W. O. HART, Louisiana: I submit that we do represent the people of the United States. Each one of us is here by commission of our state. We could not carry any provision into effect; it must be carried out by the people. We are not here in an individual capacity, but are here to represent the people of our various states.

JUDGE STINESS, Rhode Island: I move to amend by striking out the words "of the people of the United States represented by the members."

Duly seconded and agreed to.

The CHAIRMAN (JUDGE LANNING): The question now before the House is as to the amendment.

WALTER S. LOGAN, New York: I wish to say only one word: The delegates from New York have differed from the delegates from Pennsylvania many times during the progress of this Congress; but I want to say that we appreciate fully and to the utmost the patriotism and public service that has been done by the Governor of Pennsylvania in calling this Congress, and the work that has been done by the delegates from Pennsylvania, and the members of the Provisional Committee in making possible this conference and the work that it has done. I heartily favor this resolution. I believe that greater public service has seldom been done than has been done by the Governor of Pennsylvania, and the delegates from Pennsylvania, and the Provisional Committee, in making this conference possible, and in carrying its work to a successful completion.

BISHOP DOANE, New York: Might I be allowed, as a visitor to this Congress, who has been very courteously welcomed and invited to take part in this conference, to say just one word?

I believe the highest interests of morality and religion in America have been subserved to a very unusual degree by the action taken by the Governor of Pennsylvania; and I think the whole trend and drift of this Congress, under the wise, and I think most extraordinary, guidance of the Committee on Resolutions has been upward towards the highest level just now within sight. While the hope of all of us who represent the clerical and ecclesiastical interests has been for something even stronger than has been reached here; still, so far as we can look for aid and help and support to legislative bodies, the enacters and framers of laws, and those who are to administer and execute the laws, I am quite sure that you will agree with me in saying—and I am quite sure every member of our church conference will agree with me in saying—we feel infinitely strength-

ened and encouraged to go on in the great fight which, as Christian men and women, we are bound to take against the spreading cancer and evil, first, of unholy and unwise marriages, and then of absolutely improper and unauthorized divorce.

I thank God from the bottom of my heart, sir, for what this Congress has already done; and I beg to say to the President and members of the Congress, I very warmly appreciate the courtesy which has been shown me, as representing the Inter-Church Conference on marriage and divorce.

OTTO J. KRAEMER, Oregon: Although I am heartily in favor of the resolutions, yet as a member of the Committee on Resolutions, I think they should be amended to take in the expression of appreciation for the work of the Pennsylvania delegation, and I simply move that the original resolutions introduced be amended to that respect.

WIILIAM H. STAAKE, Secretary: May I say that it is a principle of the Pennsylvania Bar Association, of which Association I have the honor also to be Secretary, that no member of the Association shall be thanked for the performance of any duty; and I take it that, so far as my colleagues and I are concerned, the very highest thanks and the very fullest appreciation of such little service as the Pennsylvania delegation have been able to render in connection with the work of this Congress, has been the action of the Congress upon their work.

Calls for the question.

The CHAIRMAN (JUDGE LANNING): The question is upon the adoption of the resolution offered by the gentleman from Louisiana, as amended, as follows:

"Resolved, That as the preservation of the home is the keystone of liberty and of national life, it is peculiarly appropriate that this Congress should have been called by the State of Pennsylvania, which in so doing has again shown its devotion to patriotism and principle;

"Therefore, be it further resolved that the thanks of this Congress be and they are hereby extended to the State of Pennsylvania, its Governor and its people for their great services in providing for and calling this Congress."

Unanimously adopted.

JOHN GARLAND POLLOCK, Virginia: I move that, when we adjourn, we adjourn to meet to-night at 8.30 o'clock. That will give the Committee on Resolutions an opportunity to meet this afternoon to consider the resolutions now before it.

EDWARD W. FROST, Wisconsin: I second the motion. It seems

to me very important that the deliberations of this body be concluded as early as possible, so that the members may return to their homes. If we can, by meeting this evening, which personally is most inconvenient to me, finish our work to-night, it would be a manifest advantage; but there are important resolutions still before this body, and they should not be slighted.

Motion carried.

On motion, adjourned.

FOURTH DAY.

Evening Session.

February 22, 1906.

The Congress re-assembled at 8.30 o'clock P. M., pursuant to adjournment; Vice-President A. R. Dabney in the Chair.

VICE-PRESIDENT DABNEY: The meeting will please come to order.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I have a number of reports and recommendations to make from the Committee on Resolutions, and I will take them up in order. The committee desire me to make a motion that their committee be increased by the addition of the officers of this Congress, the President, the four Vice-Presidents and the Secretary, and I make that motion.

Duly seconded, and unanimously agreed to.

WALTER GEORGE SMITH, Pennsylvana: Next is the resolution which was referred to the Committee, introduced by Rev. Dr. Henry Collin Minton, of New Jersey:

"Resolved, That it is the sense of this Congress that the evils of divorce, being in a large measure due to hasty, unwise and ill-advised marriages, would be very appreciably decreased if all ministers, magistrates, and other persons performing the marriage ceremony would exercise the utmost caution in this matter, especially in respect to the marriage of divorced persons; and that any proper action on the part of either the states or the churches in this direction would be in the interest of the object which this Congress is aiming to accomplish."

The Committee instruct me to say they are fully in accord with

this resolution, but they do not recommend that it be adopted, because they are not clear that it is within the exact scope of the objects of this Congress.

I have in my hand a general resolution which, when I introduce it, will explain the exact position of the committee on this subject. The mover of the resolution, however, and those who believe in it, must understand that the committee individually heartily concur in the thought; and it is only by reason of their view of the rules that govern us, or should govern us, that they do not recommend this resolution.

In regard to the resolution by Dean Huffcut, of New York, to amend Resolution 2 as adopted, the Committee report favorably; and I would move that it be adopted, and if I am seconded, I will explain why I do so.

Duly seconded.

The Secretary then read the resolution, as follows:

When the courts are given cognizance of suits where the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile.

WALTER GEORGE SMITH, Pennsylvania: The mover of the resolution, Dean Huffcut, explained to the Congress this morning that his desire in offering this was to put a defendant upon the same plane with regard to jurisdiction as a plaintiff. The committee took this matter into consideration this afternoon very carefully, and reached the conclusion that Dean Huffcut was right. The effect of the resolution is not to change in any way the action taken in regard to Resolution 2, but merely to put the plaintiff and defendant on the same ground, thereby minimizing the danger of collusion in divorces.

REV. CAROLINE BARTLETT CRANE, Michigan: Will the chairman of the Committee on Resolutions please read Resolution 2 as adopted?

The chairman read as follows:

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief by absolute divorce will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

REV. CAROLINE BARTLETT CRANE, Michigan: When were man of the Committee on Resolutions please read Resolution 2 as adopted?

WALTER GEORGE SMITH, Pennsylvania: Inserted, as I understand, at the time of the passage of the resolution.

The SECRETARY: They were inserted by an amendment which was duly passed.

Calls for the question.

The Secretary proceeded to call the roll of the states, and when Michigan was called, Rev. Caroline Bartlett Crane of that delegation stated that Michigan did not vote. When South Dakota was called, Dean Sterling said:

South Dakota votes no, for the reason that you would have difficulties there. The same principle is involved in the resolution as at first reported. I asked this afternoon if an opportunity would be given to move a re-consideration of that resolution, and was overruled by the Chair, or else I would have presented an objection to that resolution. This delegation has voted aye on the passage of the resolution, I think; but no opportunity was given to move the reconsideration. We vote, as I understand now, against this amendment, or the resolution amending this resolution 2, on the same principle that we voted against it before.

The roll-call being completed, the Secretary announced that 21 states voted aye, and 1 state no.

W. O. HART, Louisiana: I want to inquire whether 21 is a majority. In order that the record may be straight, I think we had better have the ruling upon the question. The Rules of Order provide that no resolution relating to the subject of divorce shall be taken as expressing the sense of the Congress, unless it shall receive the affirmative votes of the majority of the states represented in the Congress.

VICE-PRESIDENT DABNEY: I will ask the Secretary to state how many states are represented.

REV. CAROLINE BARTLETT CRANE, Michigan: May I explain my reason for voting, in the absence of my colleague? I want to say again that I am mystified as to the time and circumstances of the amendment to this resolution as it stands by the words "by absolute divorce." Now, that was not in the original resolution as passed.

The chairman of the Committee on Resolutions, to the best of my memory, said yesterday he would like to introduce this modification, if unanimous consent were granted, but would not do so if there were objection, and I said I would object. The resolution therefore was not passed. Now I do not know when this amendment was passed. If I can be satisfied on that point, I would be glad. My reason for objection is, I want to have the matter opened for a reconsideration in order that the wife, having a forced domicile with her husband, may be able to return to her own domicile. I would like to be reassured as to the passage of this resolution by reference to the minutes.

WALTER GEORGE SMITH, Pennsylvania: I well remember now I did ask unanimous consent, but it escaped my memory. I do not remember that the amendment was afterwards inserted. I think I was in error in reading "by absolute divorce," unless the minutes show to the contrary. I remember distinctly asking consent at the time. Unless the records shows the contrary, I read incorrectly, and should have read:

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

I remember I did not press it at the time because the words, while clearer, would not make any difference to the meaning; and it is a matter of total indifference to me as chairman of the Committee whether the words "by absolute divorce" are inserted or not. I ask for the ruling of the Chair.

VICE-CHANCELLOR EMERY, New Jersey: This subsequent addition to the resolution being one which in terms refers to absolute divorce, and the condition on the part of the defendant, will aid in the construction of the former part of the resolution, and will make it certain that the prior relief related to the same thing.

VICE-PRESIDENT DABNEY: All discussion as this time is out of order. The Chair declares the resolution adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: Am I in order to move the second resolution? The next amendment offered by Dean Huffcut was an addition to Resolution 3, which the Committee report favorably, and I move its adoption. It is as follows:

Where jurisdiction for absolute divorce depends upon the residence of the defendant, not less than two years residence should be required on the part of the defendant who has changed his or her state domicile since the cause of divorce arose.

Duly seconded.

The Secretary thereupon called the roll of the states, and announced that 22 states voted aye, and none no; whereupon the Chair declared the resolution unanimously adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I am instructed also to offer the following additional resolution referred to the committee on motion of Mr. Pollard, of Virginia; and I move the adoption of this resolution:

16. Each state should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: "If an inhabitant of this Commonwealth goes into another state or country to obtain a

divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this Commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth.

Duly seconded.

WALTER GEORGE SMITH, Pennsylvania: This provision must be distinctly understood as prohibiting the inhabitants of any state going out of that state and getting a divorce for a cause which was not authorized by the laws of that commonwealth, or for a cause which occurred while the parties resided in that commonwealth, and if such a divorce is obtained in that commonwealth it will be void in the commonwealth of the matrimonial domicile of the parties at the time the offense was committed. That statute was under consideration by the Supreme Court of the United States in the case of Andrew vs. Andrews, and, in a very luminous opinion by Mr. Justice White, was held to be constitutional. The chief reason for passng the statute is this: in the opinion of the Committee it is good in itself; but, as was said in debate in the Committee, a chain is only as strong as the weakest link; and we hope that this uniform divorce law will be accepted in all of the states; but it is possible there may be delay, and that it will not be accepted in all of the states at once. If that were so, it would be possible for inhabitants of a state that had no such statute, to go and get the benefit of the laws of a state that had. Here is a direct prohibition, and it is an incentive to the states to adopt a uniform law; and a prohibition against inhabitants of states which do have the uniform law to go into another jurisdiction.

Calls for the question.

The Secretary called the roll of the states; South Dakota reported two aye, one no; the Secretary then reported 19 states voting aye, and 2 no; and the Chair declared the resolution adopted.

DEAN STERLING, South Dakota: I want to inquire whether it requires a majority of the states represented to adopt a resolution, or whether just a majority of the vote cast according to the rules? I am not certain. There were 19 votes for the resolution and 2 against. Nineteen is not a majority of all the states represented in this Congress.

VICE-PRESIDENT DABNEY: In reply, I would say, unless I am overruled, the Chair will hold that in as much as so many of the delegates have gone away, we are not held strictly by the rule adopted. I think a strict construction of the rule would require a majority of all of the states represented in this Congress, but as I say, the Chair will put a different construction upon this rule unless overruled; and declares the adoption of this resolution.

WALTER GEORGE SMITH, Pennsylvania: Mr. President, I now move the adoption of the resolution, also reported favorably by the committee:

17. Fraud or collusion in obtaining or attempting to obtain a divorce should be made statutory crimes by the criminal code.

Duly seconded.

VICE-PRESIDENT DABNEY: You have heard the resolution; and you have heard the motion for its adoption. Are you ready for the question?

DEAN STERLING, South Dakota: I ask that this rule be read so that it will be a further guide for this Congress.

Rule read by the Secretary.

VICE-PRESIDENT DABNEY: Are there any remarks on the question?

WALTER GEORGE SMITH, Pennsylvania: I do not wish, Mr. Chairman, and I have not wished from the beginning of these proceedings, that anything should emanate from this Congress that was not the result of full, complete and free discussion on the merits on the part of any one who wished to address the Chair on the subject; and I venture to say that no one can justly say that any one of the Committee on Resolutions has unduly pressed any matter. I rise now to urge, with emphasis, that this rule be interpreted in the only way it can be reasonably interpreted. It must mean a majority of those represented when a quorum is present. It certainly was not in my mind when I drew it—and I drew it in the first place—that we should cripple ourselves and put ourselves in a position where one gentleman voting against a proposition could deprive us of the opportunity of expressing our views on the subject.

W. O. HART, Louisiana: Will the gentleman allow me to ask him a question?

WALTER GEORGE SMITH, Pennsylvania: Yes.

W. O. HART, Louisiana: Please show me where in the rules anything is said about a quorum?

WALTER GEORGE SMITH, Pennsylvania: But in the absence of anything being said about that, a majority, as I understand parliamentary usage, means a quorum; and I would like to ask any lawyer in this assembly, those who have made a special study of parliamentary law, if there be experts on parliamentary law, and those who have been accustomed to be present in bodies where parliamentary proceedings took place—

FRANK H. KERR, Ohio: I suggest that rule 2 might help you

out, Mr. Smith. The usual parliamentary rules shall govern all debates.

WALTER GEORGE SMITH, Pennsylvania: Thank you. I will be glad of any assistance. Besides, if it were not included in that—that refers to parliamentary debates—with 22 states represented here to-night, to say that every time there are two or five, or ten negative votes, this Congress cannot express itself is simply absurd. And another thing, I appeal to the sense of fairness of my friend who voted against this, because he was opposed to the original proposition, which was discussed fully, and ask him whether, when he was overruled by a majority of the Congress, he is willing to take the responsibility of saying that the sentiment of this Congress, when he knows that is the sentiment of this Congress—shall not go out to the American people.

DEAN STERLING, South Dakota: In answer to the gentleman, I will say this: I speak, and I vote in this Congress only from a sense of conviction, and sincere conviction upon any proposition before this Congress; and I do not believe there is a member of this Congress than can say from my attitude on any question, or by my demeanor here, that I vote from any other sense or motive than that of conviction upon the question involved. I say that the minority here, and we are in the minority, have a right to speak our convictions; and we have a right, as in every parliamentary body, to rely upon the rules which are framed in part for the protection of the minority. Reference has been made to the rule—

JUDGE STIMPSON, Indiana: I rise to a point of order—there is nothing pending; there was no appeal from the decision of the Chair, and the Chair made a ruling, and there is nothing now before the House that raises the question.

DEAN STERLING, South Dakota: I ask it then, as a question of privilege. My motives have been impugned.

WALTER GEORGE SMITH, Pennsylvania: I did not mean to question the gentleman's motives or his convictions, and I should apologize for my seeming to have done so. I simply want to ask him this question with the utmost respect; I want to ask him whether he is willing to obstruct the expression of what I respectfully submit, he must know from the previous debate is the sense of this Congress, and I beg to assure him my criticism involves no reproach or reflection upon his sincerity.

DEAN STERLING, South Dakota: I will answer the gentleman this way; if a resort to these rules allows me here in any way to express my sincere conviction upon a single one of these resolutions,

I am going to resort to the rules, and it is the right of every individual member to do it.

VICE-PRESIDENT DABNEY: What rule is the gentleman referring to now?

DEAN STERLING, South Dakota: Rule 2; the rule to which the gentleman from Ohio refers. That is a general rule; then we have here the rule which governs votes on all resolutions relating to the subject of divorce; and that is the special rule, and must, according to the rules of construction, govern the general rule which has been formulated in rule No. 2, and no resolution on the subject of divorce shall be taken as expressing the sense of the Congress unless it shall receive the affirmative votes of a majority of the states represented in the Congress—and not a majority of those present at any particular time, or of any quorum, no quorum having been mentioned here in any of these rules—but the affirmative votes of the majority of the states represented, not now or at any particular time, but represented all told in this Congress, and 44 states I think have been and are represented in this Congress.

AMASA M. EATON, Rhode Island: I think this is the first time I have had occasion to dissent from Brother Smith, and I do so with great reluctance; but I think he is entirely wrong in this instance. When I first read the rules I noted this with the greatest satisfaction, because I supposed it to be the purpose that nothing could be done in this Congress unless a majority of the states represented at the Congress should support it; and I thought there was a reason for it, and I thought that that was the reason it was so framed. We are here to establish a uniform law, and it is useless for us to suggest a uniform law for adoption throughout the states, unless we can go before the country with the sanction of the majority of states represented in the Congress. From the construction of the gentleman, if there were but eleven states here voting that would be a majority 11 states voting aye out of 21 present; and yet that would only be about one-quarter of the total number of states represented in the Congress. What sort of a position would we be in to go before the country with the affirmative vote of eleven states. Really, it seems to me perfectly clear that before we can definitely adopt anything, we must have a majority of the total number represented in this Congress. That is the language of the rule, and it cannot be construed in any other way. It is a matter of great importance; and it seems to me if the gentlemen for any reason were obliged to go away, we cannot transact any further business.

CHARLES F. LIBBY, Maine: I was unavoidably detained, Mr. Chairman. I should like to record the vote of Maine in favor of resolution 16.

THOMAS TAYLOR, Jr., Illinois: It is said 41 states are represented here. My understanding is only 33 states have actually been represented. Now that word "represented" means what? If there have been represented here at this Congress only 33 or 36 states, that must be the maximum number of which we need a majority to make a quorum. There have not been, as far as I have discovered, 41 states represented. If 41 states responded to the Governor's call, that does not mean that those 41 states were represented. Represented must mean those that actually present themselves, and constitute part of this Congress. We have never had 40 to my knowledge, and I do not think we have had over 33 or 36.

The SECRETARY: We have never had a vote representing more than 36 states. On the morning of the assembling of the Congress some of the states which were represented by members of the National House of Representatives, or the Senate, did appear and announce their presence. They then disappeared, and did not reappear, and consequently they never actually voted in the body. When I called the State of Montana, somebody, possibly by mistake, answered, and I recorded it as one of the 41 states; and when the roll call was over, I announced to the President that 41 states and the District of Columbia were represented. Now, the actual facts are that Alabama being entirely represented by three members of the lower House of Congress, Arkansas being likewise so represented, they have never taken any part in the proceedings, and have never voted at all. Colorado the same way. In fact, Colorado was one of those states as to which there was possibly a response on Monday morning, but there has been no response from that time to the present. That made three off my count. The State of Idaho has never voted upon any subject. Mr. Birdsall, representing Iowa, was here at one of the sessions, and then departed, and never voted. The Secretary has since found that the reply for Montana was evidently a mistake. But he was so sure that Mrs. Haskell, one of the delegates to the Congress, was present, that she was even placed on a committee. Only yesterday he received a letter from her announcing her inability to be here, so that he found that was a mistake.

As to the number of states which have actually voted, including the District of Columbia, there have never been more than 36 states voting at any meeting. There have been only, if you count Alabama, Arkansas, Colorado, Idaho and Iowa, as being represented in the Congress, then there have been only 40 states and the District of Columbia.

REV. DR. HENRY C. MINTON, New Jersey: Gentlemen: I have listened very docilely to the discussion by the members of the

legal profession here present. I have had some little experience in parliamentary work, and I have been some times interested in the peculiar and unique tactics of the gentlemen of the bar; but, gentlemen, lawyers are supposed to have a sacred regard for constitutional law. We adopted, at the beginning, a constitution, if you please, to guide us in our proceedings; and in all my knowledge and experience in parliamentary affairs, I have never once in bodies heard a rule so liberally interpreted as practically and substantially to set aside the rule. Now, I am entirely in sympathy with the action which is desired to be taken, but we are playing with a buzz-saw when we set aside this rule; and I do not believe that any man would, out of an unbiased position, without regard to the matters in contemplation, say it is safe for us now to set aside this rule and go ahead. I think that our efforts might better be applied to the question as to how we can do the thing we want to do otherwise. Can we go into the committee of the whole or what not?

At the beginning of this session to-night a resolution which I presented, without any zeal, was set aside upon a strict and literal interpretation of the province of the Congress. I have no objection; that is all right. But we cannot play fast one moment and loose the next; we cannot blow hot and cold; and I submit, without anything else than the purest dispassionate construction of the question, that it is perilous for us to proceed now under the franchise of that which to this body is a constitutional rule in the matter of its own parliamentary order and procedure. If the rule does not allow us to do that thing, I think it is unwise to go on; and I think we would possibly regret it if we should go on and do it. Is there not some other way we can get about what we want to do?

REV. CAROLINE BARTLETT CRANE, Michigan: I wish to say that I very much desire to have a reconsideration of Resolution 2, and have resolved to ask the unanimous consent of the House for the reconsideration of that resolution so that sections 2 and 3 should not apply to a wife who was obliged to go from the state of her ante-nuptial domicile. However, to-night, with the small number of states represented, I think it a matter of honor not to press the question. The matter was decided in a previous session; and unless there is a legal representation here, I should consider it dishonorable for me to press this resolution, much as I desire to have it passed.

VICE-PRESIDENT DABNEY: The Chair does not claim to be infallible, but the Chair wants to be understood. The Chair gave you his reasons for suggesting liberality in the construction of this rule. When this Congress was convened, and when these rules were adopted we only had one subject under consideration, and that was the

subject of divorce. Now then, the first line of the fourth rule says, "Votes on all resolutions relating to the subject of divorce." Now, we have been discussing some questions with relation to marriage, etc. My interpretation of that rule is that it would only apply to questions on the subject of divorce; and, unless I am further advised, on every resolution touching the question of divorce, we would be required to have a majority of the states represented in this Congress in order to carry it. That is the position of the Chair.

WALTER GEORGE SMITH, Pennsylvania: May I request the Chair to have a call of the roll to see how many states are represented?

DEAN STERLING, South Dakota: I would like to say a word before the roll is called. I am a member of the Committee on Resolutions, and, with but very few exceptions, have been in entire accord with the resolutions submitted. Having acted upon that committee, I have tried to be consistent, and have not opposed the resolutions proposed to this Congress, nor offered any amendment; although, after having heard discussions upon several of these resolutions, there were some amendments that I would like to have interposed, but I have not done so. The attitude which South Dakota takes in the divorce proposition is not one of defense of present existing conditions. We are not here, Mr. Chairman, for the purpose of passing resolutions to procure laws absolutely in conformity with some other states; but for the purpose, if possible, of obtaining laws which shall be uniform. Now, the provisions in resolution No. 2, and the second paragraph proposed by the gentleman from New York, and also the resolution over which this controversy has arisen, will make trouble in our State, and some of the other Western states, and will be in the way of securing uniformity.

But, we would rather have half a loaf than no loaf at all. We do not want to defend, as I said before, the laws which we now have; but would like to have a law that can be presented to our legislature with some chance of its passage. It is for that reason we are now taking the position which we take. It is not that we want to obstruct the proceedings of this Congress, nor that we want to prevent an expression of this Congress upon these matters; but we do believe that the resolutions that have already been adopted are sufficient; and to pass more stringent ones, predicated upon which a law will subsequently be drafted, will make it harder for us in South Dakota, and many of the Western States. It is for that purpose and no other, that we take the attitude we do upon this question, and although we now insist upon a technical right, if we must do so, we feel that we ought to take it in the interest of our State, and, we believe, in the interest of Uniform Divorce Law.

JOHN GARLAND POLLARD, Virginia: I want to call the attention of this Congress to what the result would be if this rule were given any such meaning as is intended by the delegate from South Dakota. I want to call attention to the fact that on several occasions during the sessions of this Congress resolutions have been passed on the subject of divorce without having received a majority of 41 votes. If that is to be the rule, we will have to strike from our list of resolutions quite a number that have been already passed. I remember on one occasion the vote was 16 to 15, and was on an amendment; but it is sufficient to take that amendment out of the resolution that we have adopted, because, as it stands at present, it was not adopted by a majority.

JUDGE STIMPSON, Indiana: I renew my point of order. There is nothing before this House, and we have had a debate for at least twenty minutes. It is growing late, and although I like to hear the debates, I do not think we ought to hear them at this time.

AMASA M. EATON, Rhode Island: I rise to ask a question of the Chairman. I think our brother who has just now spoken is mistaken. I do not think there has been any vote taken, except in accordance with the rules; and I ask the Secretary for information on that point.

VICE-PRESIDENT DABNEY: The Chair holds that it is too late for that question now.

DEAN STERLING, South Dakota: I appeal from the decision of the Chair on the construction of the rule.

VICE-PRESIDENT DABNEY: That is not before the House.

WALTER GEORGE SMITH, Pennsylvania: As I understand the ruling of the Chair, resolution 16 was adopted; and I now renew the offer of resolution 17, and move its adoption.

Duly seconded.

The Seretary read Resolution 17, as follows:

"17. Fraud or collusion in obtaining or attempting to obtain a divorce should be made statutory crimes by the criminal code."

The VICE-PRESIDENT: You have heard resolution 17, and heard the motion of its adoption. Are you ready for its adoption?

Calls for the question.

The SECRETARY: Before calling the roll, I want to say it happens that Mr. Pollard is correct; but at the same time, it has had absolutely no effect. The vote to which he referred was on a motion to strike out something, and the vote was 13 ayes and 16 noes.

Every other vote—and they are all of them here, were 27 ayes, 30 ayes, 35 ayes, 2 noes; 33 ayes, 29 ayes, 32 ayes, 32 ayes and so on, so that you will not go away with the idea that there has been anything defective.

The Secretary then called the roll of the states on the adoption of resolution 17, and announced that 22 states voted aye, and none no; whereupon the Chair declared resolution 17 unanimously adopted.

WALTER GEORGE SMITH, Chairman, President: The report of the special committee of five on the propriety of reporting a draft of a Marriage Code came also before the committee for consideration, and I am instructed to offer the following resolution on the subject, and I move its adoption:

"Resolved, That while the Congress does not regard the consideration of the marriage laws as within the purview of the call under which it assembles, it desires to express its earnest hope that some suitable effort will be made by some other body to secure uniform marriage laws, and especially a uniform marriage license law; and it would respectfully recommend the matter to the consideration of the Commissioners on Uniform State Laws."

Duly seconded.

VICE-PRESIDENT DABNEY: You have heard the reading of the resolution and the motion for its adoption; are you ready for the question? The Secretary will call the roll of states.

W. O. HART, Louisiana: I submit that the roll call is not necessary on that question, as it does not relate to divorce.

It was unanimously agreed that roll call was not necessary; and the question being upon the adoption of the resolution, it was unanimously agreed to.

WALTER GEORGE SMITH, Pennsylvania: The resolution reported by the committee this morning and laid on the table, I move to take up and dispose of:

"Whereas, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem, and

"Whereas, Only eleven of the states now provide for such collection and publication, therefore be it

"Resolved, That this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary of this Congress to the governors of all the states for submission to the legislatures thereof with the object of securing as nearly as possible uniform statutes upon the subject."

I move the adoption of this resolution.

Duly seconded.

W. O. HART, Louisiana: I would suggest that after the word "governors" be inserted "and respective delegates to this Congress," because my experience with some Governors, and I have no doubt that it is the experience of other members of the Congress, is that they do not pay much attention to communications from outsiders. I would suggest that after the word "governors" the word "and respective delegates to this Congress" be inserted.

WALTER GEORGE SMITH, Pennsylvania: I accept the amendment.

FRANCIS TRACY TOBIN, New Mexico: I desire to offer an amendment; after the word "states" insert "and territories of the United States."

Amendment accepted by the Committee; and the question being upon the resolution as amended, as follows:

"Whereas, The annual collection and publication of marriage and divorce statistics of the several states would materially aid in the study and solution of the divorce problem, and

"Whereas, Only eleven of the state now provide for such collection and publication, therefore be it

"Resolved, That this Congress adopt a draft of a proposed general law for the annual collection and publication of such statistics, which law shall be reported by the Secretary of this Congress to the Governors and respective delegates to this Congress of all the states and territories of the United States for submission to the legislatures thereof, with the object of securing as nearly as possible uniform statutes upon the subject;" it was unanimously agreed to.

WALTER GEORGE SMITH, Pennsylvania: I have nothing more to offer from the Committee on Resolutions; but I am going to transgress somewhat upon your patience to make a personal statement. Upon consultation with one in whom I have great confidence, and in consultation with myself, after the warmth of debate, I believe I was wrong in the position I took upon the matter of the interpretation of the rule; and while it has been finally ruled, I feel satisfied I can sleep better to-night for taking you into my confidence, and making this frank statement.

The SECRETARY: There are three things that I would like to call to the attention of the delegates before we adjourn. One is, on behalf of the Pennsylvania delegation, to request of the delegates present that they will kindly send to me an abstract of their laws on the subject of marriage licenses, and on the general subject of marriage, not for the benefit of this Congress, but for the benefit of the Pennsylvania delegates as commissioners to draft a Marriage Code

for their own State. We have received voluntarily from a number of the delegates an abstract of their marriage laws, and we would like to get just as many of them as we can. You will therefore be conferring a great personal favor on the Pennsylvania delegates as commissioners for their own State if you will kindly send them an abstract of your marriage laws, as indicated.

Secondly, I desire to make this motion—that all communcations which have been received and which may be received by the Secretary within the next few days, and which by the vote of the Congress, will be disposed of as might be directed by the President, be referred to the Committee on Resolutions for their benefit and for such educational value as such communications may have in their future deliberations.

Duly seconded, and unanimously adopted.

REV. CAROLINE BARTLETT CRANE, Michigan: I rise to a question of privilege: I ask to say, and I believe I express the feeling of the other women delegates, that we were surprised when this Congress was called, that so few women had been nominated by the governors of the states to aid in the consideration of a matter of such vital importance to women. I wish to say, however, that we feel that, from every man in this Congress, from the most conservative to the most radical, there has been at all times the most sincere desire to protect and safeguard the women of this country; and as a woman, and as a delegate to this Congress, I do not wish to depart without giving voice to this feeling. I also wish to say I hope it is the sentiment of every man in this Congress that every word that has been uttered upon this floor by any woman was uttered with a sincere desire to safeguard the purity of the home; and if there has been any indiscretion in utterance on the part of any woman, probably that woman has suffered most keenly; and I think her intention should win pardon for her.

DEAN STERLING, South Dakota: I hold in my hand a letter from Bishop Hare expressing great regret at not being here. He has had a long life of service in South Dakota, is in broken health seeking strength; and it is due to him, more than to any other man, that the condition of things on this subject is somewhat better in South Dakota.

AMASA M. EATON, Rhode Island: I rise not to introduce any resolution, but by request to state that a gentleman who is very much interested in this matter has drafted a uniform law relative to family desertion, asked me to distribute copies among the members. I would therefore be obliged if the members will take copies after we adjourn.

W. O. HART, Louisiana: I move that the bill which the gentleman from Rhode Island has kindly distributed in reference to wife desertion be referred to the Committee on Resolutions.

VICE-PRESIDENT DABNEY: Under the action of the Congress it will go to the committee without formal motion.

I want to say that, as presiding officer to-night, I probably erred in two or three of my rulings. If it is an error, it was not intentional; and since nobody can be injured by it, I ask that it be overlooked.

The SECRETARY: At the beginning of our deliberations I think we were impressed when the Chaplain of the United States Senate invoke the blessing of Almighty God on our proceedings; and now when we are about to separate and return to our homes, I would suggest that we should ask the venerable gentleman, the Bishop of Albany, who has honored us by his attendance at our sessions, to ask the blessing and benediction of Heaven on our future deliberations, and I so move you.

Duly seconded, and carried.

Benediction by the Rt. Rev. William C. Doane, Bishop of Albany:

Let God's grace, mercy and protection ever be with you. The Lord mercifully with his favor look upon you, and bless you. The Lord lift up the light of his countenance upon you, and give you peace. The Lord preserve thy going out and thy coming in from this time henceforth, and forever more. Amen.

Adjourned.

INDEX.

[NOTE. The various subjects relating to divorce, and other matters as to which resolutions were introduced in the Congress, will be found arranged under the heading "Resolutions."]

ing quality that recommended Japanese labor to the railroad companies in the West. Today there are almost 2,000 Japanese workingmen who are engaged in the repairing of roads along the leading Western railway lines, and especially those of the Southern Pacific, and it is the desire of these railway companies to increase this number by many thousands.

From these data it will be seen what part the Japanese immigrants are playing in the material development of California, and what sort of people constitutes the Japanese colonies in that State. It is the writer's hope that the statement herein set forth may prove not altogether useless in a consideration of not only the anti-Japanese measure adopted by the San Francisco Board of Education, but the broader question of whether or not the Japanese in general are not good enough to mix with the Americans.

CHICAGO, ILL.

The National Congress on Uniform Divorce Laws

BY ERNEST W. HUFFCUT

[Professor Huffcut is Dean of the Cornell University College of Law, and the author of several well-known law books. He was a delegate from the State of New York to the Uniform Divorce Congress, whose session has just ended.—EDITOR.]

UPON the invitation of the Commonwealth of Pennsylvania, extended by Governor Pennypacker, the governors of over forty States sent delegates to a National Congress on Uniform Divorce Laws at Washington last February. The congress adopted a series of resolutions embodying the principles upon which a uniform divorce law should be based, and instructed its committee on resolutions to draft such a statute. The committee met in St. Paul last August to consider the work of its sub-committee, and again in Philadelphia this month. When the congress reconvened, on November 13th, a proposed uniform divorce statute had been drafted and, with slight changes, was adopted. It will now be sent to the legislatures of the American States with the recommendation that it be passed. In the somewhat improbable event of its being enacted by all of them, and also in the Territories and the District of Columbia, there would be but one law of divorce procedure in the United States.

The proposed statute does not attempt to secure uniformity of causes. It was from the outset recognized that such an attempt would fail, and thereby imperil the passage of the jurisdictional and procedural portions of the statute; and these, after all, are of the first importance. Accordingly the congress, while enumerating the causes which are generally recognized, adopted a resolution as follows:

"This Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any State; and in those States where causes are restricted, no change is called for."

The main features of the proposed statute are:

(1) A careful provision as to the methods by which jurisdiction in divorce proceedings may be acquired.

(2) A provision that in cases where a party, whose residence gives jurisdiction, has moved into the State since the cause for divorce arose, no jurisdiction shall be taken unless the cause alleged for the divorce was a cause in the State in which such party resided at the time the cause of action arose.

(3) A provision (following the present Massachusetts statute) that if a person leaves a State in order to procure a divorce for a cause which occurred while the parties resided in that State, or for a cause which is not a ground of divorce in that State, a decree so obtained shall be of no effect in that State.